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IMPLEMENTATION OF WARTIME CONTRACTING REFORMS

HEARING

BEFORE THE

SUBCOMMITTEE ON FINANCIAL AND
CONTRACTING OVERSIGHT
OF THE

COMMITTEE ON
HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

ONE HUNDRED THIRTEENTH CONGRESS

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CONTENTS

	Page
Opening statement:	
Senator McCaskill	1
Senator Johnson	2

WITNESSES

TUESDAY, JULY 16, 2013

Richard T. Ginman, Director, Defense Procurement and Acquisition Policy, U.S. Department of Defense	4
Hon. Patrick F. Kennedy, Under Secretary of State for Management, U.S. Department of State	5
Aman S. Djahanbani, Senior Procurement Executive and Director, Office of Acquisition and Assistance, U.S. Agency for International Development ...	7

ALPHABETICAL LIST OF WITNESSES

Djahanbani, Aman S.:	
Testimony	7
Prepared statement	65
Ginman, Richard T.:	
Testimony	4
Prepared statement	35
Kennedy, Hon. Patrick F.:	
Testimony	5
Prepared statement	57

APPENDIX

Information from Mr. Kennedy to Senator McCaskill	73
Information from Mr. Ginman to Senator Johnson	74
Executive Office of the President, prepared statement	75
Information submitted by Senator Johnson	79
SIGAR Report, prepared statement	85
POGO Report, prepared statement	91
Responses to post-hearing questions for the Record:	
Mr. Ginman	93
Mr. Kennedy	120
Mr. Djahanbani	146

IMPLEMENTATION OF WARTIME CONTRACTING REFORMS

TUESDAY, JULY 16, 2013

U.S. SENATE,
SUBCOMMITTEE ON FINANCIAL AND CONTRACTING OVERSIGHT
OF THE COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
Washington, DC.

The Subcommittee met, pursuant to notice, at 9:33 a.m., in room SD-342, Dirksen Senate Office Building, Hon. Claire McCaskill, Chairman of the Subcommittee, presiding.

Present: Senators McCaskill, Johnson, Ayotte, and Coburn.

OPENING STATEMENT OF SENATOR MCCASKILL

Senator McCASKILL. Good morning. Thank you all for being here. I thank Senator Johnson for attending this morning.

It is hard to believe that I have been at this for over 6 years working on wartime contracting. It has been in many ways a roller coaster ride.

There have been days that I thought there was no hope and then there are other days when we were able to get so many of these provisions finally into law that I thought we were really rounding the corner; and today we are here to examine if, in fact, we have turned a corner or if we still have a lot of work to do.

We are going to today review the implementation of the wartime contracting reforms mandated in last year's National Defense Authorization Act (NDAA) and to address a couple of current contracting issues that have come up.

On August 31, 2011, the Commission on Wartime Contracting (CWC) in Iraq and Afghanistan presented its final report to Congress. On February 29, 2012, Senator Webb and I introduced S. 2139, the Comprehensive Contingency Contract and Reform Act of 2012, which was based on the findings and recommendations of the Commission.

Just so everyone remembers, Senator Webb and I began in 2007 when we arrived in the Senate as new freshman working on getting a War Contracting Commission that could look extensively at issues of how we contract during times of war.

The provisions of the Comprehensive Contingency Contracting Reform Act, which were based on the findings of that Commission, were incorporated in the fiscal year (FY) 2013 NDAA that was signed into law January 2 of this year.

A few of the provisions had reporting requirements that were due earlier this month and several of those provisions have targets to be met by the end of this year.

This morning we have representatives of the Defense Department (DOD), State Department, and the United States Agency for International Development (USAID) here to testify about how their respective agencies are complying with the wartime contracting provisions.

Based on the reports that these agencies have made to Congress, they are working to implement these provisions. I am encouraged by their progress. However, there is still a long way to go.

The majority of the provisions in the law passed last year apply only to future contingencies. Unfortunately, they do not apply to Afghanistan now where we are continuing to hear about contracting problems.

I learned just this week that the Defense Department spent millions to construct a building in Afghanistan that has never been used. This facility was built despite the fact that the forward commanders said they neither needed nor wanted this facility in May 2010, almost a full year before construction began.

We now have a brand-new state-of-the-art building that cost the taxpayers \$34 million to build. The worst part is that all indications are they are going to tear it down. We cannot even give it away to the Afghanistan government for free because they do not want a building that they will have to spend millions to rewire because it was built to U.S. electrical code.

I also recently learned that more than \$13 million may have been wasted on a USAID agricultural development contract with a company called Chemonics. The waste alone is bad enough but the Special Inspector General (SIG) also found that the contractor failed to cooperate with the audit. Frankly, that is just unacceptable.

I will also ask questions about the security of our embassy in Kabul. The Subcommittee first held a hearing on this topic in 2009 and I continue to have serious concerns regarding that contract.

These examples illustrate why it is so important that contracting reforms passed this year are fully implemented and our government has learned the lessons finally once and for all of Kosovo, Iraq, and Afghanistan. I plan to continue to hold hearings like this one until that time comes.

The Office of Federal Procurement Policy (OFPP) has provided a letter regarding their implementation of the war contracting provisions. I ask unanimous consent that this be included in the hearing record.

I thank the witnesses for being here today and I look forward to their testimony. Senator Johnson.

OPENING STATEMENT OF SENATOR JOHNSON.

Senator JOHNSON. Thank you, Madam Chairman.

It is interesting, the couple of examples you did bring out that I would like to reinforce a little bit. The \$34 million building, 64,000 square feet, what is just depressing about that is the commanders tried to stop its construction.

It was originally proposed in February 2010. By May 2010, they said they really do not want it, but in February 2011 it was contracted out and we went ahead and produced it or constructed it at a cost of \$531 per square foot.

Now, I have done a lot of construction for, plants, pretty complex manufacturing structures. We have never had anything that cost \$531. We checked with the National Association of Home Builders (NAHB). The average cost of a home is about \$80 per square foot. So, there are so many problems with that example you raised. We will certainly have questions on that.

You also talked about the security situation in the embassy in Kabul. There is a pretty interesting article that I would like to submit for the Record by the Project on Government Oversight (POGO). It was actually a report issued in January 2013.

And, as you are reading that report, again this is contractor security and whistleblowers from that contract that are being fired for raising alarms about the lack of security.

And, what is alarming to me is, as I am hearing in this report, the response of the State Department saying that it takes very seriously the concerns of the Aegis personnel but at the same time those people are being fired.

It is eerily similar to what we heard in terms of the security around the embassy or the consulate in Benghazi and the resulting tragedy of that. So, I am going to have a number of questions about that situation as well.

Madam Chairman, I really commend your efforts in holding hearings like this. Our hearing yesterday, we just hear the same problems time and time again, the lack of accountability, the lack of incentives to do things in a cost efficient manner; and when it comes to talking about protecting our personnel in very dangerous places, it seems like we are going to make the same mistakes time and time again.

So, this is a very timely airing. I am looking forward to the testimony of the witnesses and I certainly appreciate you coming here to testify. Thank you.

Senator McCASKILL. Thank you, and let me introduce the witnesses. Richard Ginman serves as Director of Defense Procurement and Acquisition Policy (DPAP). He retired as a rear admiral from the U.S. Navy after 30 years of service in 2000. Prior to assuming his current position, he served as Principal Deputy to the Director from 2008 until 2010 and Deputy Director of Contingency Contracting and Acquisition Policy from 2010 until becoming the Director in June 2011.

Patrick Kennedy has served as Under Secretary for Management in the U.S. State Department since 2007. He has been with the Department of State for 39 years and has held positions including Director of the Office Management Policy, rightsizing innovation, Assistant Secretary for Administration, U.S. Representative to the U.N. for Management and Reform, Chief of Staff of the Coalition Provisional Authority in Iraq and Deputy Director of National Intelligence for Management.

Aman Djahanbani is the Senior Procurement Executive, Chief Acquisition Officer and Director of the Office of Acquisition and assistance at USAID. Before assuming his current position, Mr.

Djahanbani worked overseas as a supervisory contracting officer for USAID. He began his procurement career with the U.S. Department of Defense where he worked for more than a decade at the Naval Regional Contracting Center in Saudi Arabia and Singapore.

It is the custom of the Subcommittee to swear all witnesses that appear. I would ask you to stand and do you swear the testimony that you give before this Subcommittee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. GINMAN. I do.

Mr. KENNEDY. I do.

Mr. DJAHANBANI. I do.

Senator McCASKILL. Let the record reflect that the witnesses have all answered in the affirmative.

We will be using a timing system. Five minutes give or take. Mr. Ginman, if you would go ahead with your testimony. Thank you very much.

TESTIMONY OF RICHARD T. GINMAN,¹ DIRECTOR, DEFENSE PROCUREMENT AND ACQUISITION POLICY, U.S. DEPARTMENT OF DEFENSE

Mr. GINMAN. Chairman McCaskill, Senator Johnson, distinguished Members of the Subcommittee. I welcome this opportunity to discuss the Department of Defense's "Implementation of Wartime Contracting Reforms." You asked me to address 14 provisions in the National Defense Authorization Act for fiscal year 2013. Each provision is covered in my written testimony and I asked that it be submitted for the record.

Senator McCASKILL. It will.

Mr. GINMAN. The Department has made a number of improvements to operational contract support (OCS) for short, based on independent reviews such as the Commission on Wartime Contracting, the Gansler Commission, and various Inspector General reports as well as the Department's own analysis.

From the top down, the Department is committed to ensuring support for our warfighters through contracts that are carefully planned for, executed, and monitored. This applies to the current mission in Afghanistan as well as to future conflicts.

The Department established a permanent board to oversee our progress in improving OCS capability. The board identified 10 capability areas requiring improvement and more than 140 individual actions. I provided your staff the entire action plan last week for your review.

Also, the Department is engaged in Better Buying Power Initiatives to obtain greater efficiency and productivity in our spending. We take seriously our charge to protect public funds.

In addition, the Department works with its civilian agency colleagues on Federal-wide initiatives, interagency topics, and ensuring lessons learned. This includes working with the Department of State and USAID, who are here with me today.

Some improvements in contingency and conventional contracting have required congressional assistance. We appreciate this Sub-

¹The prepared statement of Mr. Ginman appears in the Appendix on page 35.

committee's continued strong support not only for necessary legislation but also for our deployed forces both military and civilian.

The Department is focused on meeting the warfighters current and future needs while judiciously managing the Department's resources and balancing risk. Much has been accomplished but, of course, challenges remain.

Thank you for the opportunity to appear before you today to discuss the Department's implementation of wartime contracting legislation and I welcome your questions.

Senator McCASKILL. Yes.

TESTIMONY OF THE HON. PATRICK F. KENNEDY,¹ UNDER SECRETARY OF STATE FOR MANAGEMENT, U.S. DEPARTMENT OF STATE

Mr. KENNEDY. Good morning, Madam Chairman, Senator Johnson, Senator Ayotte. Thank you for inviting me here today to discuss the Department of State's implementation of contingency contracting provisions in the fiscal year 2013 National Defense Authorization Act, a matter that I know is of particular interest to the Chair.

State takes this contracting responsibility seriously and is always seeking improvements. Directly after the enactment of the 2013 NDAA, State formed three working groups to focus on risk assessment for contingency contracting, contracting management, and our acquisitions and contracts management workforce.

The results were incorporated into our Section 850 report which was sent to the Congress last month. The working groups found that State's structure and processes support our national security mission and that our centralized acquisitions office, based in Washington, D.C., and our two Regional Procurement Support Offices support our contingency contracting requirements.

The working groups continue meeting to advance the implementation of the NDAA provisions, and we are working with Government Accountability Office (GAO) on their Section 850 engagement.

The Department continues making improvements to its contracting program. The Office of Acquisitions Management continues to hire contracting staff. We have emphasized increasing the number of Contracting Officer Representatives (COR) in our regional and functional bureaus for the day-to-day contract oversight.

We have improved COR training and established a COR Advisory Board to share best practices.

State is establishing a Contract Management Office in Kuwait to support our Iraq operations and this could be a model for future contingencies.

The State will examine using human resources flexibilities such as recruitment, retention, and relocation incentives to ensure expedient hiring for contract oversight functions. As flagged by GAO, State issues guidance to strengthen management of interagency acquisition agreements as working with DOD on overall coordinating arrangements.

Regarding our NDAA sections, State examined its use of Synchronized Pre-Deployment Operational Tracker (SPOT) under Sec-

¹The prepared statement of Mr. Kennedy appears in the Appendix on page 57.

tion 844. We believe SPOT is the preferred system for tracking personnel under contingency contracts and are working to improve data quality.

We are also working with DOD to integrate data from the Federal Procurement Data System (FPDS) automatically into SPOT. We continue using SPOT reporting to Congress with DOD and USAID per Section 847.

We are evaluating our risk management processes under Section 846 and are looking at more formally establishing a centralized risk management unit at State.

The new responsibilities of the Chief Acquisition Officer (CAO) under Section 849 have been specifically incorporated into those of State's Chief Information Officer (CIO).

Per Section 861, we have designated a Suspension and Debarment Official (SDO) who is not part of either the Office of the Inspector General (OIG) or the Office of Acquisitions. This SDO is supported by a newly added suspension and debarment program manager who works only on S and D matters. Per the GAO, successful S and D programs have dedicated resources, detailed policies, and a referral process.

State has all three and we have gone from zero suspensions and two debarments in fiscal year 2008 to three suspensions and 31 debarments to date in fiscal year 2013.

Several sections of the bill, namely 802, 852, and 853 promote governmentwide changes and need incorporation into the Federal Acquisition Regulations (FAR). State is an active member of the Civilian Agency Acquisition Council (CAAC) and is working on these matters as detailed in my written statement which I hope would be entered into the Record.

Senator McCASKILL. Without objection it will be.

Mr. KENNEDY. Under Section 862, the State is working with the Office of Federal Procurement Policy and the interagency in developing standards to ensure continued alignment of our existing contract writing system with any new governmentwide data standards that might be developed.

Under Section 1273, the Department of State will undertake assessments to ensure that a capital project that is both requested by the host government and can be sustained by it. Since NDAA enactment, State has not undertaken any capital projects that would trigger the need for an assessment.

With regard to private security contractors (PSCs), I know that the Chair has concerns PSCs providing security at posts such as Kabul, and I will be glad to answer any questions.

The State Department has used the guards for the protection of our facilities and personnel since the 1970s. PSCs are critical to our readiness and capability to carry out American foreign policy under dangerous and uncertain security conditions.

We fully appreciate the need for robust oversight of PSCs. Particularly in conflict areas, contractors are operationally overseeing and contractually managed by direct hire State personnel. My written testimony describes our oversight message.

Currently in Kabul, we have a well managed, effectively functioning contract that provides security to protect our people and facilities.

In conclusion, while we recognize that State's contracting organization is organized effectively to undertake both routine and contingency contracting, we know and we believe that we must strive to learn from past practices and to better align contingency contracting especially with the guidance of the 2013 NDAA provisions.

The Department will continue to refine its processes, procedures and strategies to ensure that adequate resources and oversight mechanisms are in place for future contingencies.

I stand ready to answer any questions that you might have, Madam Chairman.

Senator McCASKILL. Thank you, Secretary Kennedy.

Yes, Mr. Djahanbani.

TESTIMONY OF AMAN S. DJAHANBANI,¹ SENIOR PROCUREMENT EXECUTIVE AND DIRECTOR, OFFICE OF ACQUISITION AND ASSISTANCE, U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT

Mr. DJAHANBANI. Chairman McCaskill, Ranking Member Johnson, thank you for the opportunity to discuss the actions the U.S. Agency for International Development has taken to implement the contracting reform provisions passed into law in the fiscal year 2013 National Defense Authorization Act. I will briefly summarize my remarks and asked that my full statement be entered into the record.

USAID welcomes the Subcommittee's continued interest in these matters. Our agency has thousands of personnel working in more than 80 missions worldwide to improve the economic environment, global health, food security, and overall development of these nations in support of U.S. foreign policy.

This means that we are often operating in areas of conflict and contingencies. So, we as an agency and I personally recognize and support the emphasis on greater accountability, sustainable results, and compliance that the provisions have brought forth.

I came into my current position with more than 25 years of inter-agency contracting experience including in contingency operations. I started my career with the Department of Defense; and since joining the foreign service in 1998, I have served in missions from Ghana to Peru to Jordan and recently spent 2 years as the supervisory contracting officer in Pakistan.

I have personal experience with many of the real issues facing our program offices today and fully support the intent and spirit of this legislation.

Over the last several years, USAID has undertaken an aggressive series of reforms called USAID Forward. I am proud and honored to say that many of our USAID Forward efforts are in line with your legislation. The provision provide solutions to some of the most important issues that we continue to face in our engagements in Afghanistan and Iraq and foster a better environment for contingency contracting in the future. In fact, we have proactively implemented many of these reforms over the last few years.

The last time USAID appeared before you we told the Subcommittee we were exploring ways in which we could strengthen

¹The prepared statement of Mr. Djahanbani appears in the Appendix on page 65.

the independent authority of our agency suspension and debarment official. While our current structure meets the requirements of the provisions, USAID is transferring the duties out of the procurement office to a senior official within the Bureau for Management.

Additionally in 2011, Administrator Shah issued the USAID sustainable guidance for Afghanistan aimed at ensuring programs are sustainable and closely aligned with the United States and Afghan national priorities.

We are conducting regular reviews of our projects and have taken actions to cancel projects where necessary including some infrastructure road programs like the Bamyan-Dushi Road in Afghanistan.

We also have modified some projects midway to increase their sustainable results while preserving the existing investment of American taxpayer dollars.

The bottom line is that we are learning from the past and leveraging lessons from Iraq and Afghanistan to build a stronger foundation for effective, accountable contracting practices.

Sustainability is undoubtedly one of the greatest challenges we face during a time of war or conflict. However, we as an agency have a core belief that it is imperative for not only contingency operations but for all of our operations. It is one of the key pillars of USAID Forward.

It is also a focus area of the agency's new senior management accountability review process in which all new awards at the \$25 million level will be validated by an Assistant Administrator to ensure the project meets Federal accountability criteria including a demonstrated commitment to sustainable results. Additionally, the Administrator himself will provide the final authorization to make an award at or above \$75 million.

USAID has also developed for the first time ever a corporate level acquisition and assistance plan that allows us to see all procurements across the agency's worldwide operations. This plan has helped create transparency throughout the agency and has contributed significantly to streamline, more effective implementing mechanisms.

USAID continues to be a world-class development agency and is proudly taking actions to implement reforms to strengthen our contracting practices.

With regard to your specific legislation, my written statement details the actions we are taking as an agency to implement them, and I am happy to address any particular section you like.

I want to thank you for this opportunity to discuss these actions and to receive input from you and your staff. We are all working toward the same goals to increasing accountability, sustainable results, and compliance across the spectrum of not only contingency contracting but all government contracting.

Thank you again and I look forward to our discussion.

SENATOR McCASKILL. Thank you very much. Let me start before I begin asking questions and acknowledge that everyone is making progress. I mean, these hearings, as you all are painfully aware from my perspective, are all about making a point and holding your feet to the fire and so my questions, some of them are going to be

tough but I did want to acknowledge at the beginning of the questioning that we are making progress.

It is much better than it was in 2007 in every single one of your agencies but I have to start with obviously the awkward situation that I find myself in that, having been reassured by the Defense Department over and over and over again that sustainability is always considered in, I mean, when we argued with them about what kind of sustainability analysis, oh, I was reassured, oh, we always do sustainability.

Well, clearly we have a brand-new building that the right-hand did not know what the left-hand was doing or, even worse, the right-hand ignored the left-hand which were the commanders on the ground.

Let me give you an opportunity, Mr. Ginman, to explain how in the world this thing got built when the people on the ground were saying stop, do not do this, we do not need it, and it will not be used.

Mr. GINMAN. I do not have an explanation and it is very difficult to sit here and say that at least as it is reported and clearly we now have a building that is not needed and I do not know how it will be finally disposed of.

I do know the Army has initiated, it is called an Army Regulation 15-6 Investigation to go through all of the analysis and what it is; and until those facts are actually reported out, and that investigation is done, I do not think the Department is in a position to be able to state unequivocally what actually occurred and why and who was accountable.

But certainly in the face of being told we do not need this and then proceeding, that just does not make sense.

Senator McCASKILL. Especially when you look at the time period that passed before the contract was given and if you get a heads-up in May 2010 that the building is not needed and the contracts are not executed until the following year, it really shows a systemic issue on this and it is what I said about the Commander's Emergency Response Program (CERP) and the son of CERP and, as you know, the Afghanistan infrastructure fund where are we are doing this and frankly we have the same thing when we look at the Chemonics audit at AID.

I think you probably know this without me saying it that I am not going to stop on this until I know who it was that failed to read the file or who it was that said go ahead and let the contract without doing due diligence about the necessity of the building.

And, by the way, the sad thing here is to most Americans \$34 million sounds like a lot of money. You know what I am worried about? I am worried about the people who are making these decisions, this is chump change.

Mr. GINMAN. Yes, ma'am.

Senator McCASKILL. Who cares about the \$34 million; it is only \$34 million.

Mr. GINMAN. What I do know is over the course of the last 18 months, the theater has done four separate reviews of the MILCON budget, and has taken either descoped or canceled \$1.4 billion worth of MILCON projects. That is somewhere in excess of a hundred separate projects.

I also know that to NATO Training Mission Afghanistan/Combined Security Transition Command Afghanistan (NTM-A CSTC-A), the group that does the procurements for Afghanistan, has done a series of reviews and has taken \$2.5 billion dollars out of that project, excuse me, totally out of that project, and that General Dunford has kicked off a fifth review once again in MILCON just to ensure that we are not doing this.

So, how this one went through, I just cannot sit here and give you an explanation.

Senator McCASKILL. I am on the edge of my seat—

Mr. GINMAN. Yes, ma'am.

Senator McCASKILL [continuing]. To get this information. Please explain to everyone that the more quickly we can do this I think it is pretty important that we come up with an answer to the question, how did this happen sooner rather than later because of every day that passes that we do not know the answer, it makes me very nervous that it is happening in other places.

Mr. GINMAN. I am told that the expected due date for the report with completed analysis is somewhere in the next 30 to 60 days.

Senator McCASKILL. Let me move over to Mr. Djahanbani. I have read the Chemonics audit. Have you read it?

Mr. DJAHANBANI. Yes, ma'am.

Senator McCASKILL. Do you think all the people that work for you have read it?

Mr. DJAHANBANI. Yes, Madam Chairman, I am pretty sure.

Senator McCASKILL. I worry that these audits do not get read. That was always something that bugged me when I was doing audits that we worked very hard and one of the performance goals I had when I was an auditor is how do we get people to read them.

When I read this audit, first of all, what actions have been taken against this contractor for their failure to cooperate with an audit?

Mr. DJAHANBANI. Madam Chairman, we are taking the Special Inspector General for Afghanistan Reconstruction (SIGAR's) concerns very seriously and we have recently received this audit. The mission is reviewing it very carefully because again it is an odd situation that Chemonics that we do business with would not want to cooperate with the auditors.

So, Madam Chairman, if you could, if I could get back to you, our offices with your office, to understand the case, to read it, and assess it, and understand the situation because we are very concerned about this. If I may, it does not pass the commonsense test at this point.

Senator McCASKILL. Well, and I want to make sure that, as we look at and I will spend more time on this in the second round about the systems that we are trying to put in place in terms of bad performance by contractors, debarment and suspension, that a failure to cooperate with an audit needs to be part of a bad performance. It needs to be taken into consideration as to their future eligibility for contracts.

The other thing I want to drill down on in this particular contract is really the \$64 question about that contract and that is, I would like to know from your agency how much money have we spent trying to get the Afghanistan people to quit growing poppy over the last 20 years?

How many billions of dollars have we spent trying to move them off of poppy and what are the performance metrics in that regard? How much success have we really had?

And, I am not really sure how building public parks gets them off growing poppy which was part of this contract. I get distributing wheat seed and fertilizer is. I get building an agricultural center and teaching them ways to make money off of an agricultural economy other than poppy.

But, at what point do we throw in the towel? I bet if we take a look at the amount of money we have spent trying to get them off poppy over the last 20 years, I think probably if we look at the numbers, I hope I will be surprised that we had success but I think this may go under the headline of how long we will hit our head against the brick wall much to the detriment of the American taxpayer.

Mr. DJAHANBANI. Madam Chairman, I would like to get you the right numbers and if I may get those numbers for you for the record I would like to do that.

Senator McCASKILL. OK. We will followup on that. Senator Johnson.

Mr. DJAHANBANI. Thank you.

Senator JOHNSON. Thank you, Madam Chairman.

Mr. Ginman, you did realize that we were going to be asking about that \$34 million building, correct?

Mr. GINMAN. Yes, sir.

Senator JOHNSON. Did you make any phone calls prior to this hearing to get prepared to answer the question?

Mr. GINMAN. Yes, I did.

Senator JOHNSON. What did you learn other than you are just going to take another 30 to 60 days?

Mr. GINMAN. Well, so, I did learn there was an investigation ongoing, and the findings of what is in that investigation I do not yet have. They have not been published.

Senator JOHNSON. Why does it take so long to get to the bottom of something that in industry, trust me, if somebody built a \$34 million building and I told them not to build it and it still got built, I would know who made that decision very quickly. I would know within a day. I would know within a few hours. Why is it so impossible to get the questions answered in the government?

Mr. GINMAN. I guess I will step way back. Having been a part of a Navy JAG manual investigation for a \$400,000 embezzlement in the dispersing office, it took us about 30 to 60 days to go through and actually find the individuals, many whom had left the ship and to be able to go back through the whole thing, and get all of that. So, many of the people I am sure that they are now trying to figure out where are they now, who are they—

Senator JOHNSON. There is a chain of command for this, correct?

Mr. GINMAN. Yes.

Senator JOHNSON. OK. We will get into that later. What we have is a basic lack of accountability in government, and that is why it is so out of control. I think, quite obviously David Axelrod was right. It is too vast, and that is a problem.

Mr. Kennedy, talk about accountability. Prior to September 11, 2012 terrorist attacks in Benghazi, did you at any time review the

March 28, 2012 or July 9, 2012 cables from Ambassadors Cretz and Stevens requesting additional security? Did you review those cables?

Mr. KENNEDY. I believe I did, Senator, I do not have my Benghazi documents here with me what I can check—

Senator JOHNSON. You read those. OK. Did you discuss those requests with anyone, particularly did you discuss those with Secretary Clinton, Cheryl Mills, Deputy Secretary Nides or Deputy Secretary Burns?

Mr. KENNEDY. No, sir.

Senator JOHNSON. So, those cables and that information, those requests for security stopped with you?

Mr. KENNEDY. I guess.

Senator JOHNSON. They went no further?

Mr. KENNEDY. We review them, Senator. I always have extensive discussions with my colleagues in the diplomatic security service. If matters rise to the point where we feel that we cannot mitigate and the risk based upon the intelligence that is available to us, we act. For example—

Senator JOHNSON. You took that responsibility on yourself then to deny those requests for additional security even though we knew those security situations were deteriorating.

Mr. KENNEDY. First of all, Senator, the request in several of those cases in those cables, if my recollection is correct, and again I do not have them in front of me, were talking about security in Tripoli, in Tripoli, not in Benghazi.

We reviewed the situation very carefully and, as I said, if we cannot mitigate the risk, just as we did in Damascus, Syria, we will close the post and move on.

I will be glad to pull those cables as soon as I get back to my office and—

Senator JOHNSON. We have them and we will submit them for the Record.

Senator JOHNSON. On April 19, 2012, the State Department responded to those requests. This cable informed embassy Tripoli that the Department would continue to withdraw security despite the Ambassador's request.

Did you at any time review or approve that cable, the April 19 cable that, by the way, bore Secretary Clinton signature?

Mr. KENNEDY. Again, Senator, that cable, if my recollection is correct, regards Tripoli, sir, our embassy in Tripoli not the temporary mission facility in Benghazi.

Senator JOHNSON. In addition to the September 11 memo which basically said that the State Department did want to maintain a presence in Benghazi, did you at any time review, authorize, or direct the deployment or redeployment of diplomatic security agents in Libya prior to the September 11 terrorist attack?

Mr. KENNEDY. Did I? No, sir, I did not withdraw any diplomatic, I never directed the withdrawal of any diplomatic security agents.

Senator JOHNSON. Did you at any time communicate or confirm to the Defense Department that State Department would not be needing the site security team (SST) after August 2012, and if so, when?

Mr. KENNEDY. I did, sir. The SST was a Tripoli-based detachment that had been sent into Tripoli when we went into Tripoli. It consisted of eight shooters in effect plus explosive ordnance detection people, aviation experts, communications experts, medical experts, over the course of our standing up the embassy in Tripoli. No relation at all to Benghazi.

In the process of standing up our embassy in Tripoli, the State Department replaced those individuals with State Department personnel. We had sent our own medical personnel. We sent in our own communications—

Senator JOHNSON. We will talk about why we are using State Department rather than military personnel for those types of situations.

What is the current status of the employees named in the Accountability Review Board reports, specifically Eric Boswell, Scott Bultrowicz, Charlene Lamb and Raymond Maxwell?

Mr. KENNEDY. They are on administrative leave.

Senator JOHNSON. And being paid?

Mr. KENNEDY. Yes, sir.

Senator JOHNSON. Do we know what their next assignments are going to be?

Mr. KENNEDY. No, sir, we do not.

Senator JOHNSON. Were you fully aware of the deteriorating security situation in Benghazi?

Mr. KENNEDY. I read the material, Senator, but there was no intelligence generated by either the State Department or by any other of our partners in the U.S. Government agency, DOD or the Intelligence Community (IC), that direct a threat of that nature that appeared in Benghazi. There was a rocket attack. There was a car bomb.

Senator JOHNSON. Why would we actually ramped down the security in Benghazi when the people on the ground were asking for additional security? Why would we do that?

Mr. KENNEDY. Senator, we did not ramp down the security in Benghazi. The examples you referred to earlier, particularly the SST, were personnel assigned to the embassy in Tripoli, not to the temporary mission facility in Benghazi. So, we did not remove people from Benghazi.

Senator JOHNSON. What is the criteria the State Department uses in contracting out security versus using U.S. military?

Mr. KENNEDY. It depends upon the host nation approvals. It depends upon funds availability. It depends upon the mission sets that are required.

Senator JOHNSON. During the Foreign Relations Committee hearing when we were questioning Secretary Clinton, there were certainly accusations that one of the problems in Benghazi is the funds just simply were not available. I mean, it is true that if the State Department requests security from the military, they will provide that security and it does not cost the State Department a dime, correct?

Mr. KENNEDY. That depends, Senator. Some military support is provided on a reimbursable basis and some support is provided on a non-reimbursable basis. It depends on the situation. Sometimes we pay; sometimes we do not.

Senator JOHNSON. What would have been the case in Benghazi? Mr. KENNEDY. I do not know because there was no request.

Senator JOHNSON. You never requested it even though the security situation was—

Mr. KENNEDY. There was no request for military personnel in Benghazi.

Senator JOHNSON. Thank you, Mr. Secretary.

Senator McCASKILL. Senator Ayotte.

Senator AYOTTE. I want to thank the Chairman and the Ranking Member for holding this important meeting. I want to thank very much the witnesses for being here today.

Mr. Ginman, let me just start with particularly contracting in Afghanistan and Section 841 provisions. Senator Brown and I know you have worked on this issue very closely—pushed to get the no contracting with the enemy provisions in because one of the issues we have had in Afghanistan, as I understand it, has been that some of the money was flowing into the hands of insurgents. Is that right?

Can you describe for me how 841 has been used effectively to cutoff funds to insurgents? And then again Senator Blumenthal and I now have after a meeting I had with Major General Longo in Afghanistan in July now have provisions that will extend these authorities to the Department of State and USAID.

So, I certainly will be asking both of you about that and also making sure that we can drop the amount from the threshold from 100,000 to 20,000.

So, can you talk to me about this issue, and I know that this is a very important issue to me and I am hoping that we will pass this legislation to further enhance these authorities.

Mr. GINMAN. So, it was getting the legislation I think 2 years ago now was important to us.

Senator AYOTTE. Right.

Mr. GINMAN. It has been used 11 times. Ten times with subcontractors and one time with a prime to a total of currently I believe \$31 million.

We have looked at both the legislation, your bill that was submitted and then the revised Senate bill that was put out and provided view statements. We are basically in agreement with the legislation. We did offer and we have worked with your staff to improve it.

I would say I have now read through the current Senate provision and again from my personal perspective, since we have not provided a Department view statement, I am in agreement with what it says and where it goes. I would like to continue to work with your staff.

I think there is one particular phraseology that limits our ability to, in fact, void. It deals with head of contracting activity and who has the authority.

But, other than that, the Department submitted legislative proposals asking for 841, and 842 authorities I would also add is important to us to be able to make it work, to have the access to records. The Task Force 2010, in order to be able to do the analysis and the forensic work they do has to be able to get to the subcontractor records, and Section 842 gives us that authority.

Senator AYOTTE. Right.

Mr. GINMAN. So not only do we need your bill but we also need Section 842 extended as well.

Senator AYOTTE. So, let me just ask certainly Secretary Kennedy as well as Mr. Djahanbani, I apologize in pronouncing your last name. These provisions that Senator Blumenthal and I have introduced, essentially what they flow from is that understanding that money, taxpayer dollars are flowing to insurgents and our enemies and that the traditional contracting rules that may work well in Washington, that you need greater authorities to cutoff these funds sooner particularly in areas where there are obviously wartime situations but also other contingency situations around the world.

So, Mr. Kennedy, have you, I would like to ask you what your position would be on extending these authorities to the State Department because it seems to me when I look at what the SIGAR has said, they have said it is important as well as the Commission on Wartime Contracting has identified this as an area where you also should have this authority to cutoff funds sooner.

So, what is the State Department's position on this?

Mr. KENNEDY. I have not seen the exact nature of the legislation. I know my colleagues are meeting with your staff, Senator. But, I do not want one penny of U.S. Government money to go to any terrorist; and therefore, an independent grant of authority to the Secretary of State to be able to cutoff a contract of ours where it is determined that money is going to terrorists, I totally and completely support that.

I cannot add, since a year ago because of parallel legislation coming, that came in one of our appropriations bills and in one of the titles on that, we have been running pilot vetting programs of this nature both in five countries and a separate program in Afghanistan.

So, we are on this, but as you say, the ability to cutoff a contract immediately, if you gave me that authority I would gladly take it.

Senator AYOTTE. And, would you also like to comment with regard to USAID what their position is? I do not remember the individual I met with but when I met with Major General Longo in Afghanistan in January there was also a representative of USAID there, and I apologize for not having his name right now but he said to me that this was just as much an issue for USAID, particularly of making sure that taxpayer dollars did not get in the wrong hands.

Mr. DJAHANBANI. Thank you, Senator. USAID agrees that preventing funds from going to terrorists is, of course, the highest priority for us, and that is the reason we have such a robust vetting system in Afghanistan.

The Administration is still reviewing your legislation and does not have a formal position on it yet.

We believe that we do have strong authorities in place currently and we would like to examine that legislation more to be able to understand the differences between the authorities that we currently have. However, we are looking forward to working with your staff on the legislation, Senator Ayotte.

Senator AYOTTE. Well, do you vet existing contractors and existing subcontractors, USAID?

Mr. DJAHANBANI. We do in Afghanistan.

Senator AYOTTE. And do you compare it to known intelligence with insurgents?

Mr. DJAHANBANI. There is a very rigorous process, Senator, that we go through.

Senator AYOTTE. Well, if it is so rigorous and you think you have the authorities you have now, then why did the Commission on Wartime Contracting find that Afghan subcontractors on a USAID community development program in Kunar province were paying up to 20 percent of the total subcontract value to the insurgents for, quote, protection and that USAID Inspector General estimated that over \$5 million of program funding was at risk for falling into the insurgents hands.

In fact, one of the recommendations that comes from the Wartime Commission on Contracting is that there be greater authorities given not only that DOD has requested but this also apply across the State Department and USAID.

So, I find it hard to believe that you have the authorities you need right now to address this problem.

Mr. DJAHANBANI. Senator, we would like to know particularly what kind of impact this will have on what we are currently doing; and if it is and additional tools that we will be able to use and we do not have those authorities, we would gladly go along with it. But we would like to look at the differences between the authorities right now.

Senator AYOTTE. I just want to correct. It was the SIGAR who said that not the Commission on Wartime Contracting but the principle is the same.

Mr. DJAHANBANI. Yes.

Senator AYOTTE. There seems to be a real urgency. I know my time is up but the fact that you come to this hearing and not be able to have reviewed this legislation which has already been incorporated and defense authorization has been pending for a while, we have been communicating with your staff about, this very much concerns me that you would not want the authority to cutoff funds to our enemies.

So, I just feel like to not come to this hearing and have an answer for me that you have a viewpoint on this it really bothers me. So, I will be following up on this and I expect an answer. I will be submitting a question for the record and I would be shocked if you did not want this authority.

Mr. DJAHANBANI. Senator, I would like to say again that we do have a wide variety of authorities at our disposal right now. We have been using them quite considerably for many years and we may want this in our toolbox. It is just that we are looking at it and we will work with your staff.

Thank you very much.

Senator McCASKILL. Senator Coburn.

Senator COBURN. Thank you for having this hearing.

Mr. Ginman, explain to me how we got in the problems with Camp Leatherneck. Would you kind of walk me through how we built a base that the Marines did not want; and they, 3 years prior to its completion, had communicated that and yet we continue to

do it. I want to be taught please so I can understand what happened.

Mr. GINMAN. So, Senator, as I said before, I do not know all of the details. I do know that an investigation has started at least as the SIGAR letter to the Defense Department reads.

Certainly in 2010, a Marine general said I do not need this building. As Senator McCaskill said in her opening remarks, construction started in 2011. I believe it was completed in 2012.

At least on the face of it, I have no ability to sit here and give you an answer on how that occurred or why it occurred. I do know that I need to let the investigation run its course and understand all of the details so that we can determine, as Senator Johnson said, who, in fact, made the decision and why did it occur. At least from my perspective at the moment, it defies logic.

Senator COBURN. OK. One of my observations, having done this for a number of years now, is we get hung up on process which is important but we do not look at outcomes.

Do people in the Pentagon or at USAID or at the State Department, is there someone in any of those three organizations when something is obviously going in the wrong direction that has the authority to say stop? Maybe not a permanent stop but stop. Let us stop. Where is that in the Pentagon? Where is that in the Department of State and where is that at USAID?

Mr. GINMAN. I will at least take a shot from a DOD prospective.

Senator COBURN. Thank you.

Mr. GINMAN. I would like to think that from the chain of command that anybody who is in that particular chain of command and any decisions made if they think it is wrong has the ability to say stop, do not do that.

I can tell you at least from a contracting perspective in the areas for which I am expressly responsible or the person who held my job before Mr. Assad and who is now the director of defense pricing, when we find it contracts that clearly are inappropriate, we do say stop.

I believe Mr. Kendall in his role as Acquisition, Technology, and Logistics (AT&L), the Under Secretary of Defense for AT&L has said stop on a variety of occasions.

Again, it is a leadership issue. Do we make mistakes, oh, certainly.

Senator COBURN. I am not critical of mistakes being made. Everybody does that.

Mr. GINMAN. Well, some of them you have to wonder.

It is much like fraud. We have the recent newspaper articles where we just sentenced the individual to 20 years. At the end of the day, we attempt to have separation of powers so the person who has the requirement, the person who places the contract, the person who oversees the contract, and the person who pays it are, in fact, separate.

From time to time in any number of areas that we wind up collapsing those and it increases the risk when we do so. When people do not follow an ethical compass, bad things are going to happen, and hopefully we catch it.

I think the IG, the SIGAR, the DOD IG certainly have helped us find those; and when they do, I do think we take action. But, from

my standpoint, sir, it is a question of leadership and the people that are in those positions when they find the things, if they had the power to say stop or at least take a pause and say that I believe that we, in fact, do that.

Senator COBURN. Any comments from you?

Mr. KENNEDY. If I could, Senator, we also have multiple points in the State Department. If you look at our command structure overseas, an ambassador, a deputy chief of mission, the management officer which is the senior operating officer, if any of them see something that is going wrong, they certainly have the authority to pause the situation and then refer it and refer it to Washington and in Washington there is the executive director, the Chief Administrative Officer, the Bureau Deputy Assistant and Assistant Secretary and me.

We get all the time material that comes in from an ambassador saying we were going on a direction, the situation has changed politically, economically, structurally, we need to not do something that is proposed. And, they send in a justification and unless there is some overarching argument that they are not aware of, we stop them. We make changes in our program plans all the time when the circumstances that hopefully said that this is the right decision in the first place then we make changes, sir.

Mr. DJAHANBANI. Sir, I am very passionate about this. When I was in Pakistan the 2-years that I was posted there, the Inspector General came to me and they mentioned they had a situation. All I did was I looked at the information and there was no doubt in my mind that the project had to be ended and I ended it right there. I went to the mission director. I told him the reasoning behind it and it was terminated.

That is how serious we take this situation, sir.

Senator COBURN. Let me followup. We have built a couple hospitals in Afghanistan through USAID and the whole goal is so that they will be able to sustain them. But, the cost to run these hospitals is about four or five times what the cost is to run what they are replacing.

How does that fit with the model of sustainment when they are not going to have the funds to continue to run those hospitals?

Mr. DJAHANBANI. Dr. Coburn, regarding these two hospitals, I have been briefed on them and my understanding is that the Ministry of Health has, in writing, have told us that they are going to fund these two hospitals for them to be sustainable. That is the information that we have.

Senator COBURN. All right. So, let us assume that is right. The question I would have in terms of health care for Afghans is, not making the same mistakes we make in our country. And so, if we add sophistication, one of the things that Dr. Shah has been so great at is downgrading requirements so that we meet needs but we do not necessarily meet them the same way we meet them here, whether it is resuscitating babies or whatever it is.

So, we have designed infrastructure for the Afghans at a level that kind of goes against what he talked about in terms of philosophy there. So, we are building two new institutions there that from somewhere in the Afghan government they are going to be stealing the money from somewhere else to maintain a hospital at

our level of expertise rather than at the level of expertise that they need.

How did we get so crosswise with what Dr. Shah wants to do in terms of meeting needs but not doing it under the level of sophistication that we do?

[Pause.]

Mr. DJAHANBANI. Dr. Coburn——

Senator COBURN. I mean, that is the reason why these are going to cost that much.

Mr. DJAHANBANI. Sure. Again, our project design process that we go through is rigorous and we make sure that all of the criterias necessary in the project designs are incorporated from sustainability to cost effectiveness, and all of our projects go through that process.

So, I will be glad to look into this matter and get you more information for the record. But, I would stand by the project design process we go through which is very robust and incorporates all the necessities like sustainability and risk assessments and all that is being done throughout that process.

Senator COBURN. I know I am over time and I apologize, but there is a problem in terms of sustaining these two hospitals, is there not? There is going to be a problem. Even though they may have committed to pay for it for the first year or two, the fact is there is going to be a problem.

So, if we have a rigorous standard in terms of sustainability and yet there is a problem with sustainability, either there is not a problem with sustainability or there is not a rigorous standard, and that is my point because I think one of the great things Dr. Shah brings to the USAID is practical common sense on trying to accomplish outcomes rather than get tied up in the mess of requirements, let us treat people's illness and prevent disease rather than transfer our cost structure to them.

So, I yield back.

Mr. DJAHANBANI. Dr. Coburn, in fact, just to followup on what you mention about Dr. Shah, what we implemented just last week is an accountability policy whereby all assistant administrators have to review all requirements that go above \$25 million to make sure that the seven qualifying factors which sustainability is one major part of it is included in those requirements.

And, Dr. Shah himself will be reviewing anything above the \$75 million. As you said, this is very important to us.

Thank you, sir.

Senator MCCASKILL. I am going to try to go through hopefully in a fairly quick fashion, and I will take another round if I need to on various sections of the war contracting reforms that have enacted into law and asked some questions about them.

I will start with Section 844. All of you are using the SPOT database, and I try to always not speak in acronyms but bear with me when I talk about that acronym. We have done hearings on SPOT and the other, I forget the acronym, it is five letters and ends with next-generation. What is it?

Mr. GINMAN. Federal Procurement Data System Next Generation (FPDSN).

Senator McCASKILL. There you go. I knew you could speak the language. It is required of you at the Pentagon.

When we have looked at this, the SPOT has really been under-utilized and very inaccurate. So, let me ask all of you some very quick questions.

Do you believe you have the capability now to collect and report on personnel and contracts on any given date? Mr. Ginman.

Mr. GINMAN. Yes.

Senator McCASKILL. Mr. Kennedy.

Mr. KENNEDY. Yes.

Mr. DJAHANBANI. Yes.

Senator McCASKILL. What is the total number of contracts you have entered into. Mr. Ginman.

Mr. GINMAN. So, from October 12 through May 13, we have done 207.1 thousand actions in Afghanistan and Iraq to a total of \$7 billion. It was 1,000,293 transactions in fiscal year 2012 to a total of 18.2 billion.

Senator McCASKILL. I would like to have that document. It looks like you got it laminated for me. Thank you.

Mr. GINMAN. I am happy to share it with you.

Senator McCASKILL. So, you can also give me the value of those contracts. Can you give me the total number of contractor personnel you have right now?

Mr. GINMAN. I think the actual personnel I have was through April.

Senator McCASKILL. What is that number right now?

Mr. GINMAN. Today in Afghanistan, this is through April, 107,796.

Senator McCASKILL. Do you have total number of security personnel?

Mr. GINMAN. 17,993.

Senator McCASKILL. How about contractor casualties?

Mr. GINMAN. I do not have that on this list. We have, in fact, modified spots so that it can count for casualties, both wounded and killed. That particular part of the database is probably the area that we still need the most, the most work to get its quality and its state of capability up.

Senator McCASKILL. I do not think anybody realizes that your testimony just now in my world, balloons should have dropped from the ceiling, because when I started in this, no one knew any of that. So, that is a really good sign.

Now, what we do with that becomes even more important. Once we get reliable data, then all the excuses about failure to oversee kind of become even more lame.

Secretary Kennedy, do you have the same kind of data available to you?

Mr. KENNEDY. I brought our fiscal year 2011 and fiscal year 2012 totals with me, Senator.

Senator McCASKILL. OK.

Mr. KENNEDY. I can easily gin up an fiscal year 2013 to date and send you but I did not bring a snapshot today. We can hit the machine and make it talk to us but I can give you fiscal year 2011 and fiscal year 2012—

Senator McCASKILL. Broken out by security personnel versus contractors?

Mr. KENNEDY. For example, in fiscal year 2012, the total number of contractor personnel for the Department of State in Afghanistan was 1,878, and 809 were performing security functions. I also have those for Iraq.¹

Senator McCASKILL. And AID?

Mr. DJAHANBANI. Madam Chairman, the Global Acquisition Assistance System, this is how we award all of our requirements in the agency. Eighty percent of all the funding goes through this mechanism and it has direct interface with FPDSNG and the Federal Aid Data System (FADS). The FADS collect all the assistance data.

Madam Chairman, we will be glad to provide you all those numbers including the number of personnel, for the record.

Senator McCASKILL. Section 846. This is the requirement you do risk assessments and risk mitigation for contractor support including those functions closely associated with inherently governmental functions.

Even though it is not required at this time, have you perform risk assessments for Afghanistan? Mr. Ginman.

Mr. GINMAN. So, at least as you asked that question, I do not think we can tell you we have done a risk assessment. We do routine risk assessments with the plans on going forward when people are looking at do I do this through contract, do I do it with civil servants, or do I with military. As those plans are being put together in theater, yes, they review for risk.

Senator McCASKILL. And, are you all in the process of preparing for Section 846 where you will have that risk assessment?

Mr. GINMAN. The two sections of 846, at least as I understand them, the first piece is as we are doing planning to consider risk and we do that today—I cannot do this off the top of my head.

It is covered in, the Chairman of the Joint Chiefs of Staff Manual (CJCSM) 4301 is an instruction that talks to how we do planning and put in those plans. In it, risk assessment is covered.

The second half is when we go in—so, that is one just in the plan. The other is when we go into a agency operation within the 60 days to have done a risk assessment, and we will do that as well.

Senator McCASKILL. And this is really a kissing cousin to Senator Ayotte's legislation and language that we have tried to adopt in the NDAA this year moving forward based off your legislation because if you do the right risk assessment, you do not end up having to pay off the bad guys because you make a determination that we are going to be, in fact, enhancing our enemy if we tried to do this particular project in this security environment.

I mean time after time if you look at the failures, it has been because they have, and by the way the can-do attitude of the military and AID and the State Department is something that we are all proud of as Americans. There is nothing that we, cannot do.

On the other hand if we think we can build a highway through the middle of the territory where everything is controlled by the

¹Information from Mr. Kennedy appears in the Appendix on page 73.

bad guys and we think we are going to do that without getting contractors shot, without paying off the Taliban, that is a dumb mistake, and we have done that with a highway in Afghanistan.

So let me ask you, Secretary Kennedy. What about the risk assessment from your perspective? I think that highway, I cannot remember if that is Defense or State. Which one is it? It is State.

Mr. KENNEDY. I will have to go back and check.

Senator McCASKILL. AID. Not you; it is him. [Laughter.]

Mr. KENNEDY. All right. I miss a lot of things. I have not missed a highway recently.

Senator McCASKILL. Neither has anyone else by the way.

Mr. KENNEDY. Three points, ma'am. Vetting. We have been engaged in a pilot program both in Afghanistan and in five other countries in an extensive vetting operation so we are piloting that right now. It has been in place about a year now. We have an office that does vetting in six countries including Afghanistan.

We have put into place a programmatic request for contracting services, a template that people must do which I think goes to your point, coupled with when the NDAA passed, one of the working groups we did is set up a contracting risk assessment organizational briefing structure, and we are working through that right now.

So that should we be faced with the State Department having to go into a contingency operation in Xanadu or Shangri-La, we would use a structure like this. My plan is to set up a small unit responsible for this.

Senator McCASKILL. Mr. Djahanbani.

Mr. DJAHANBANI. In 2010, we basically had the A-3 initiative which was implemented in Afghanistan. It is broken down into three different areas.

In terms of award mechanisms, we are utilizing awards that provided the most visibility on project costs. For example, cost reimbursable contracts and we are limiting the subcontracting to two levels only.

We are conducting the partner vetting. We have a very robust partner vetting system in Afghanistan. In addition to that, regarding the financial controls which are very important, we aim to audit 100 percent of all locally incurred costs as extra measures to identify fraud, waste, and abuse.

Senator McCASKILL. I do not mean to cut you off because I have gone over my time and I want to give my colleagues a second round and we are going to have to start votes here in 20 or 25 minutes. Here is what I would like for all of you.

I do not quarrel that you all are beginning to put into place the systems that would try to embrace what we are trying to get at in the war contracting reforms. I get it that we are doing councils and we are doing working groups and we are doing regs and we are doing, all of that and, I know it is important but sometimes it feels blah blah blah blah.

And so, what I would like to hear from all of you is I need you to try to find a project you have stopped because of risk assessment. I need you to bring to me someplace where somebody was going to build something or do something, not because of sequestration, not because we cut your money, but because based on a risk

assessment you decide, we are going to have to pay off the bad guys to do this or there is no way they can sustain this or this is a bad idea because, a water park in Iraq, which is now crumbling or the power grid in an area that is going to get blown up, I need some success stories here.

I need you to tell me some places you have done that, and I will promise you this. If you can bring me some success stories where you have cutoff projects because you appropriately evaluated both risk and sustainability, I will make you the stars of my website for as long as you want to be up there. I will herald you. I will actually send balloon bouquets. They will not drop from the ceiling but that is what we are looking for here.

We are looking for a sense that all of this work is resulting in a change of culture; and if we do not get that change of culture, I mean, I have to tell you guys you are going to be here every 6 months until Missourians kick me out of this place or I decide I have had enough, and at this point I am not sure which is going to come first.

So, I will now turn it over to Senator Johnson.

Senator JOHNSON. Thank you, Madam Chairman. I would like to go back to security contracting because I have to admit particularly in war zones it has always really puzzled me why we would not use the finest military force in the world in those individuals.

So, both for Mr. Djahanbani and Secretary Kennedy, do you have a metric in terms of what the cost is for using U.S. military personnel versus contracting those security forces. I mean cost per person, is there some metric?

Mr. GINMAN. I do not have that off the top of my head to be able to say a cost per metric. The combatant commander makes his decisions on when do I want, do I want somebody, do I want to use a soldier, sailor, airman, or marine standing in a post at gate that is interior or do I want to do that with a contractor. But the actual number is associated with that I do not know.

Senator JOHNSON. But would we not really take a look at the cost of that though? I mean, from the Defense Department standpoint in terms of us having to deal with all these deficits and the cost of these things, would we not make the decision based on, this is costing us two or three times to contract that service versus using the finest among us, the U.S. military personnel? We do not even look at that?

Mr. GINMAN. Sir, I guess I do not honestly know the answer to the question. I will have to get it for the record.¹

Senator JOHNSON. Secretary Kennedy, how does the State Department evaluate that?

Mr. KENNEDY. Well, first of all, Senator, I did run some numbers. These are, I will admit I am not going—

Senator JOHNSON. That is fine. I like ballparks.

Mr. KENNEDY. They are ballparks. We are currently at a number of the high threat posts that the State Department has designated a principal concern, we are spending about \$87 million on contracted security, and that includes American and local staff.

¹Information from Mr. Ginman appears in the Appendix on page 74.

If we replaced that \$87 million entirely with contractors, it would be \$4.8 billion, if we went from a mix of Americans and contractors, 4.8 billion.

If we used the military—and I have not had a chance, this is data that is publicly available—the cost is either \$3 billion or \$9 billion; and the distinction is the military has a planning structure, and I defer to my colleagues, that for every soldier who is engaged there is also two other soldiers who are coming off of mission and going into retraining or in prep to take the mission. So that in effect you have three divisions, one just come out of Iraq, one in Iraq, and one getting ready.

So, you can see the difference between \$86 million and \$3 billion for the military is a serious fiscal consideration.

Senator JOHNSON. I have to admit this does not make much sense to me, and then both Dr. Coburn and I have an accounting background. So we really, I would suggest we really need a pretty detailed evaluation studying in terms of the cost of contracting versus using military personnel.

Mr. KENNEDY. Senator, could I add just one thing? There is a General Accountability report on this matter which I did not bring with me.

Senator JOHNSON. OK.

Mr. KENNEDY. But I will be glad to get to you—

Senator JOHNSON. I would appreciate that.

Mr. KENNEDY [continuing]. And the committee staff the citation for the General Accountability report.

Senator JOHNSON. Secretary Kennedy, have you seen this January 2013 report from the Project on Government Oversight on Kabul embassy security?

Mr. KENNEDY. Sir, I have.

Senator JOHNSON. Were you disturbed by the report, as disturbed as I was?

Mr. KENNEDY. I am disturbed by anything that I read and then I go and check the facts, and I am much less disturbed than I was because the material that they reported I find to be sensationalized, if I might use that word, and I would be glad now or at your convenience or with your staff to go through, in effect paragraph by paragraph—

Senator JOHNSON. Well, we do not have time here. I would appreciate your coming on over to my office and I would like to walk through because I ran operations continuing shift and I am very sensitive to how you can work individuals so they are effective.

And, in this report they are talking about the contractor, their guards working 72 hours per week when the State Department guidelines would be 36 to 42 hours per week. Right there that concerns me if that is true. Would you dispute that?

Mr. KENNEDY. I absolutely dispute that.

Senator JOHNSON. OK.

Mr. KENNEDY. And if I could add one just contextual matter with your permission, Senator.

Senator JOHNSON. Sure.

Mr. KENNEDY. Our embassy in Kabul, as you correctly state, is under very high threat. There have been to direct attacks on our embassy compound in Kabul during the tenure of this current con-

tractor. Both of those attacks were rebuffed and the contractor, along with the diplomatic security colleagues there performed superbly.

Senator JOHNSON. OK.

Mr. KENNEDY. And so part of it is the proof is in the pudding. We were attacked and rewarded off those attacked with no injuries to U.S. Government personnel on our compound.

Senator JOHNSON. OK. Well, again I would appreciate sitting down talking with you because this is very disturbing, particularly in light of Benghazi.

By the way, I recognize you were not ready to talk about those cables but just to correct the record all three of those cables do mention specifically Benghazi. They are not just about Tripoli. It is about the temporary duty diplomatic security corps.

Mr. KENNEDY. I will be glad to come up and again, Senator, go over those with you or your staff because the cables have both Tripoli and Benghazi in them. Tripoli asked for certain things. Benghazi asked for certain things, and we met those requirements.

Senator JOHNSON. Who did make the decision to ramp down security in Benghazi, though? Where was that decision made?

Mr. KENNEDY. There was no decision, Senator, to ramp down security in Benghazi.

Senator JOHNSON. Certainly not to keep the security support team (SST) that was withdrawn.

Mr. KENNEDY. That was a Tripoli-based outfit that was never assigned to Benghazi. Nor was it ever proposed to the State Department or any one else that that unit be shifted from Tripoli to Benghazi.

Senator JOHNSON. Who made the decision never to fully ramp up the five requested temporary duty diplomatic security personnel?

Mr. KENNEDY. There was a request for five in Benghazi. The request from the Department was give us your needs assessment. What would those five individuals do?

The needs assessment came back. We would like three diplomatic security special agents. We want one driver, and we want one which is we called Cryptoguard. We sent, for the Cryptoguard we sent out an information technology (IT) professional and we got drivers.

So, what they wanted was three security officers plus two others, and we had three security officers there to meet their request, Senator.

Senator JOHNSON. Just one final question because I have heard this rumored. Is it true that Secretary Clinton certainly had a goal of setting up a permanent presence in Benghazi, and that was one of the things she talked to Ambassador Stevens about before giving him the job? Did you ever talk to her about that?

Mr. KENNEDY. I had one or more conversations with the secretary and there was no decision, no decision had been made. I saw that same report that you did, Senator.

Senator JOHNSON. Maybe not a decision but was there a desire to do so?

Mr. KENNEDY. No decision had been made but the point is when Chris Stephens was there, the fiscal year was ending in 19 days. There is no way in the bureaucracy both of the State Department

and our requirements for Congressional notification when you establish a permanent post or reprogram money, there was no way that was going to be done in 19 days.

Senator JOHNSON. But again, no decision was made but did you ever talk to Secretary Clinton about setting up a permanent presence in Benghazi?

Mr. KENNEDY. That was obviously an option but no decision had been made.

Senator JOHNSON. OK. But you did discuss that with Secretary Clinton?

Mr. KENNEDY. I had one discussion about this is whether to continue the temporary operation there and we continued the temporary operation. That was the decision made at that time.

Senator JOHNSON. OK. Thank you, Mr. Secretary.

Mr. KENNEDY. Certainly.

Senator McCASKILL. Senator Ayotte.

Senator AYOTTE. Thank you, Madam Chairman. I really appreciate your passion for these issues of contracting in Afghanistan and elsewhere, and I would be happy to post things on my website as well praising them for stopping projects.

I wanted to followup, first of all, particularly with Secretary Kennedy and Mr. Djahanbani. Can you pronounce it for me? I apologize. I want to make sure I get it right.

Mr. DJAHANBANI. Mr. Djahanbani. Silent in "D".

Senator AYOTTE. Thank you, Mr. Djahanbani.

General Dunford when he testified before the Senate Armed Services Committee in April has said that he believes it is critical that the State Department and USAID have the same authorities to cancel contracts as the Department of Defense, and he also said that expanding that authority to include non-DOD organizations makes a lot of sense.

So, word from the ground and I am hoping that you will look at that very carefully. Also, I know Mr. Ginman has a lot of opinions and experience with this issue. So, I hope that we can have this consistency across agencies when we are all working together, and it is obviously the three agencies are working together on some of these projects in Afghanistan that you have already been questioned about.

Mr. KENNEDY. Senator, as I said, I like the Secretary of State to have all the same authorities as the Secretary of Defense.

Senator AYOTTE. Great. Thank you very much; and by the way, as Mr. Ginman talked about, this authority in its initial inception as allowed the Department to stop contracting with certain contractors and subcontractors.

So, while I think we can do a lot more, the initial run of it has been effective and certainly there is more we can do if we give you greater authority.

I wanted to followup, Secretary Kennedy, on some of Senator Johnson's questions. Here is what is bothering me about the attack on our consulate and the prior cable.

So, I also serve on the Senate Armed Services Committee; and in February of this past year, General Dempsey as well as Secretary Panetta testified about the attack on the consulate in Benghazi before that committee; and both of them testified that

they were aware of the prior cables, particularly the cable of August 16 coming from Ambassador Stevens which described the concerns about the adequacy of the security at the consulate in Benghazi. I believe you have testified that you were familiar with that cable, is that right?

Mr. KENNEDY. That is correct.

Senator AYOTTE. They say they receive that information from a report from General Ham that went up to the Chairman of the Joint Chiefs of Staff (CJCS) and then also went to the Secretary of Defense as well; and as a result of that, in fact, General Ham approached, according to the testimony before the Armed Services Committee, actually approached the State Department asking whether the site security team from Tripoli should be extended in Benghazi; and according to the testimony before the Armed Services Committee of General Dempsey, he was told no.

Are you familiar with that testimony?

Mr. KENNEDY. My recollection was, and I just read it I believe, I thought it was that General Ham approached Ambassador Stevens about whether the SST should be extended in Tripoli. That is my recollection but I would need to refresh myself by looking at the papers before—

Senator AYOTTE. They had called the embassy. It is not clear who they spoke to according to the testimony, and they were told no. I guess the question according to the testimony before the Armed Services Committee, it is not clear who said no for the extension of the site security team. Do you know that?

Mr. KENNEDY. What I am aware of, Senator, is that there were 16 people on SST. Eight security people, two medical, two communications, two helicopter landing zone people, two EOD, that is eight; and then eight security.

That latter eight had worked themselves out of a job because the State Department had replaced them. The eight who were security had been replaced by a combination of State Department personnel and, if I may make clear, six of those eight stayed on in Tripoli which is not report—

Senator AYOTTE. Right. But my question just so I am clear, I just want to understand.

Mr. KENNEDY. Yes.

Senator AYOTTE. General Ham knew about this. Reported it up his chain of command.

Mr. KENNEDY. Right.

Senator AYOTTE. Do you know, he said that according to Dempsey, Ham called the embassy and said, because of obviously the cable receipt, and said do you want to expand the site security team, were you aware of that and who made the decision there?

Mr. KENNEDY. No, I was not aware the General Ham had contacted the embassy. I do not know who—

Senator AYOTTE. Well, I will give you a copy of that testimony because I will have a followup question, and here is my question to you.

What troubled me was that if General Ham, the commander of AFRICOM reported up his chain of command a cable from the State Department about security, involving security and other issues in Benghazi, and that went to the Chairman of the Joint

Chiefs of Staff, went to the Secretary of Defense, how is it that you, with your responsibilities, given that this was a State Department, obviously our Ambassador and the personnel that were State Department personnel here would not have reported that up your chain of command?

Mr. KENNEDY. Because we had replaced those individuals with State Department personnel. Six of them had remained.

Senator AYOTTE. It was important enough for the AFRICOM general on the ground who it was not his area of responsibility, it was not a DOD facility, that they thought a Secretary of State, a State cable should be reported up to the Chairman of the Joint Chiefs of Staff, reported up to the Secretary of Defense, and even though State Department personnel were involved, you did not report it to the Secretary of State?

Mr. KENNEDY. Because we had replaced those individuals with—

Senator AYOTTE. But that cable said that security was not adequate there from your Ambassador. You did not think that was important enough to report to the Secretary of State?

Mr. KENNEDY. Because we were repairing or fixing the shortfalls that were outlined. I—

Senator AYOTTE. I just am shocked that the general—

Mr. KENNEDY. Let me give you—

Senator AYOTTE [continuing]. In AFRICOM thought it was important enough to report it up his chain of command even though it did not involve his personnel directly and you did not.

Mr. KENNEDY. But again, Senator, two things. One, we are talking about Tripoli, not Benghazi. The tragedy took place in Benghazi. The SST was a Tripoli-based unit. So, they are two separate things.

Senator AYOTTE. OK. My time is up, but the August cable clearly involved in Benghazi not Tripoli.

Mr. KENNEDY. No question. But there was no offer, there was no offer or request from the post to keep the SST and shift them to Benghazi.

Senator AYOTTE. But we are talking about reporting up on a cable on the security of State Department personnel so that is my issue with it, but my time is up and I appreciate your being here.

Senator MCCASKILL. I am going to try to get back to contracting.

Let us go to Section 853, past performance. I know that the Office of Management and Budget (OMB) has set a 100 percent reporting all for 2015. As you all know, this is a section that requires the FAR Council, chaired by the Administrator of Federal Procurements Policy, to have a strategy on past performance indicators which has really been a problem in this area.

What is the current level of past performance reporting for each of you? Let us start with AID. What is your current level of past performing, at what percentage do you that you are reaching right now and what is your goal for this year and next year?

Mr. DJAHANBANI. Madam Chairman, this is a No. 1 priority for myself. Back in 2010, the percentage was 7 percent. Since 2011, we put a very aggressive strategy in place which has doubled the number to close to 30 percent. We are about 27 percent right now. As

the end of the fiscal year comes to a close, a lot of those reports will be coming in.

So, that percentage will go up and we do have, we have set aside November for the past performance month and we will have another standdown day to make sure we achieve the 65 percent well on our way to the 100 percent in calendar year 2015.

Senator McCASKILL. I appreciate the effort you are making with your standdown days and it is going to take some of that.

Mr. Ginman and Mr. Kennedy, are either one of you scheduling the same kind of standdown days or using any other techniques to get us up to snuff on past performance reporting?

Mr. KENNEDY. We are not using standdown days. We are using directed orders to the people to get this in. We have also started out, and I will fully admit from a pathetic base, we have doubled that.

The last snapshot we took just is about 17 percent; but just as my colleague from AID said, the data flows it at the end of the fiscal year as you are closing out contracts.

We believe that we will be 45 or 50 percent at the end of this fiscal year.

Senator McCASKILL. Well, I hope that all of you can get to 50 percent and you guys have better news, right? Mr. Ginman.

Mr. GINMAN. We are closer to 80 percent.

Senator McCASKILL. I know. You are doing really well.

Mr. GINMAN. Well, to get 100, that is still a challenge.

Senator McCASKILL. It is a challenge.

Mr. GINMAN. I issue a quarterly letter to all of the services and agencies that reported. We discussed it. Mr. Kendall hosts about a once a month business SIG and we report progress there as well.

Each of the Service Acquisition Executives, Mr. Stackley, now Mr. LaPlante, and Ms. Shyu, all understand where they are at and to push it. I am embarrassed to say that I discovered yesterday my own office is delinquent on four Contractor Performance Assessment Reporting System (CPARS).

Senator McCASKILL. That is embarrassing.

Mr. GINMAN. Well——

Senator McCASKILL. Good for you for admitting it. Points for that.

Let us go to noncompliance, Section 862. Mr. Ginman, have you completed your report under 862 on implementing uniform contract writing systems which was due earlier this month.

Mr. GINMAN. The report is written. I believe it was released out of the building. I am just not certain.

Senator McCASKILL. OK. I want to make sure we get that for the record for this hearing.

Let me ask about 802, pass-through contracts. This is obviously a big problem. We all know it is a big problem. And, what basically we are trying to do is we are trying to make sure that we do not have somebody who is passing through more than 70 percent of the work they have contracted to do. There is a pending FAR rule that the agency will put forth.

Do any of you have anything you want to put in the record about the pending rule and whether or not there are problems with it and

anything that you want to address on pass-through contracts today?

Mr. DJAHANBANI. Madam Chairman, if I may, I would like to just mention that I have gone ahead and issued a new policy directive to all of our contracting officers implementing this right now. Once the rule is effective, we will rescind that and, of course, follow the FAR rule.

Senator MCCASKILL. OK. What about Section 843. This requires the Secretary of the Navy (SECNAV) to establish a chain of authority for policy planning, execution of contract support. Part of this is that when I began realizing how bad this was, there was no way you could find somebody who was responsible, I mean, it was so disparate and there were so many tentacles of all of this based on, and I know we have CSTC-A now and other things.

Do you feel like that you are getting at the operational contract support, do you think you are getting there?

Mr. GINMAN. Yes, ma'am. So, if I could just for your last question, I am told it is still in coordination. So, the report has not left the building.

Senator MCCASKILL. OK. Well, we have 30 days so that means somebody needs to just hurry up and review it and get it done and get it out.

Mr. GINMAN. Yes.

I refer to this, and I have heard you in earlier hearings, I refer to this as the who is in charge question.

Senator MCCASKILL. Exactly.

Mr. GINMAN. I believe, one, DOD Directive 3020.49, this is a mouthful, entitled, "Orchestrating, Synchronizing and Integrating Program Management of Contingency Acquisition Planning and Operational Execution" lays out clearly who is in charge and what each of the individual roles are and what it is that they do.

Senator MCCASKILL. Who is in charge at the top? Who is the person at the top?

Mr. GINMAN. So, at the end of the day within the Department, the one person is Secretary Hagel.

Senator MCCASKILL. I know he is at the top.

Mr. GINMAN. I understand. But you have the Under Secretary of Personnel and Readiness who has very distinct responsibilities when it comes to managing the force of which contractors are a piece. The Under Secretary of Defense for Acquisition, Technology, and Logistics, very clear responsibilities.

Senator MCCASKILL. Kendall.

Mr. GINMAN. Mr. Kendall.

When it comes expressly to those issues associated with acquisition and contracting and the management of contractors on the battlefield, we have the Comptroller who has very clear responsibilities associated with the money and funding and what are we doing with it. The Under Secretary of Defense for Policy has very clear responsibilities, again, with how we do this.

So, to the question with risk assessments analysis, we are all engaged in the that. The joint staff plays a significant role in how we do all of this.

Senator McCASKILL. Well, this investigation is going to be really interesting on this building in Leatherneck because what is going to do is maybe it is going to answer that question.

Mr. GINMAN. It may in fact.

Senator McCASKILL. Because it does not appear that, I mean, I get what you are saying. I know you cannot just say, OK, this is the contracting puba over here; and if anything goes wrong, it is his head, or her head.

But what I do not want to get to is just a new bunch of jargon replacing the old jargon that was very not much not clear so—

Mr. GINMAN. So, if I could, I mentioned the action plans, the OCS Functional Capability Integration Board (FCIB) that was put together that is cochaired by Mr. Motsek, who is the Deputy Assistant Secretary of Defense Program Support, Office of the Assistant Secretary of Defense Logistics and Material Readiness (L&MR) and by Brigadier General Crenshaw, who is the Vice Deputy for Logistics Joint Staff, J-4.

The 10 capability areas that are addressed, the first one and from my standpoint the most important one, is not the policy; it is the doctrine and getting it so that the people, everybody understands what it is. When you go back to the Gansler Commission in 2007, it is the professional training. It is in the execution. It is the exercises.

Senator McCASKILL. And I know you have a joint exercise scheduled for?

Mr. GINMAN. January.

Senator McCASKILL. January, and I know you have gone from 48 people being trained for years ago to over 400 trained now. I mean, I am aware that we have really, and the corps now, I mean, when I started this, the low man on the totem pole was handed a clipboard and said it does not really matter, this is your job. I know we have done a lot of good work on this.

Mr. GINMAN. Yes. So, the magnitude and the size and the number of personnel, both civilian and military, from second lieutenants and first lieutenants to senior enlisted, all the way up through general officers, getting that inculcated in, I mean, we were encouraged when both General Petraeus and General Allen signed letters out that say contracting is the commander's business.

I mean, for 100,000 people on the battlefield and who is managing them and overseeing where this goes, it is getting so that it is understood is by far and away the largest gap that we have.

Senator McCASKILL. Right.

Mr. GINMAN. It is one that we are actively working, but it is not one that we are going to solve today or tomorrow. I mean, I think, as you say, we have made significant strides. Ma'am, we have a long ways to go.

Senator McCASKILL. Yes, you do and I will be here making sure that we get it done and I am sure Senator Johnson joins me in that.

I am way over time. I did not get a chance to get to, and we are going to have to go to a vote here, and certainly we can hold the panel for as long as you like it if you want to do more questions.

I have some specific questions for you on your remote monitoring project. I mean, this is all kinds of bells and whistles going off. The

notion that we are hiring contractors to oversee the contractors is just always a really dicey proposition, and I know it is a dangerous area.

But, I have some specific questions about the fact that MSI Worldwide is hiring people on this when the request for proposal (RFP) has not even been completed. That seems weird to me, and I need to have some specific answers to that.

So, if the RFP is not out and a contractor is already hiring people under it, that means something is rotten. Senator Johnson.

Senator JOHNSON. I just have one quick question, maybe not quick but it is just one. We are looking at the Afghan special mission wing, some reports on that. My concern is this is going to be the aircraft version of the \$34 million building.

We already spent \$122 million. I guess projected spending is about \$772 million. It is looking like an aircraft that Afghans are not going to be able to operate effectively. Contracts being let out to a Russian contractor who has been actually barred from providing that but they were able to continue the contract because it was 2012 spending versus 2013.

Mr. Ginman, can you please address the Afghan special mission wing?

Mr. GINMAN. Well, it is outside of my area, but I believe, that the Deputy Secretary sent over a letter that acknowledged the MI-17s were being bought with fiscal year 2012 funds but also went on to say if they would be bought with fiscal year 2013 funds, Deputy Secretary Carter would have determined that a waiver of Section 1277 of the NDAA for fiscal year 2013 would be in the national security interest of the United States. I think that is what the Deputy Secretary said in his letter that came over identifying it.

Senator JOHNSON. Is this being actively reviewed? Is this project being actively reviewed and is there any chance of stopping it? And who is actively reviewing it, under whose command is this?

Mr. GINMAN. Well, so the MI-17, the requirement for MI-17s comes through the Nato Training Mission Afghanistan/Combined Security Transition Command Afghanistan from the theater. It has been thoroughly reviewed inside the Department. The decision clearly was made and went up to the Deputy Secretary and I think his letter articulates this is exactly what I found and what I did. I mean, significant time and effort was put into the decision associated with MI-17s.

Senator JOHNSON. So, has the decision already been made or does it continue to be reviewed?

Mr. GINMAN. Well, I mean, I think we——

Senator JOHNSON. Are we going to spend \$772 million?

Mr. GINMAN. So I mean they are continuing to review. The Department continues to spend significant time ensuring that we will have an adequate throughput of pilots to be able to fly the MI-17s, that we have the skill set. I mean, it gets reviewed regularly at the warfighter SIG, that is led by the Deputy Secretary.

Senator JOHNSON. OK. Thank you. That is all I have, Madam Chairman.

Senator McCASKILL. I thank all of you for being here. I appreciate it very much. I know everyone is working hard on this and that there is a difference in attitude about it. I think everyone now

recognizes that contracting has to be a core competency for all of you because of the reliance we have on them.

We will look forward to some of the specific answers we have asked for. I will look forward to hearing those projects that have been stopped based on sustainability and risk, and congratulating you on my website once I get those great stories of success.

Thank you, and this hearing is adjourned.

[Whereupon, at 11:13 a.m., the Subcommittee was adjourned.]

A P P E N D I X

HOLD UNTIL RELEASED BY THE
U.S. SENATE

WRITTEN STATEMENT OF

MR. RICHARD T. GINMAN
DIRECTOR, DEFENSE PROCUREMENT AND ACQUISITION POLICY

BEFORE

U.S. SENATE HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS COMMITTEE
FINANCIAL AND CONTRACTING OVERSIGHT SUBCOMMITTEE

ON

IMPLEMENTATION OF WARTIME CONTRACTING REFORMS

July 16, 2013

HOLD UNTIL RELEASED BY THE
U.S. SENATE

Chairwoman McCaskill, Senator Johnson, and distinguished members of the subcommittee, I welcome this opportunity to discuss the Department's "Implementation of Wartime Contracting Reforms." You asked me to specifically discuss the implementation of the wartime contracting reforms passed into law in the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013, to include information on all steps that the Department has taken to comply with the NDAA's specific contingency contracting requirements. Each is addressed in my testimony.

I am Richard Ginman, Director, Defense Procurement and Acquisition Policy (DPAP), in the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics (USD(AT&L)). In addition to other responsibilities I am responsible for Department-wide contingency contracting policy. I am a Career Civil Servant, with more than 40 years' experience in government and commercial business in the fields of contracting, acquisition, and financial management. Before returning to government service and joining DPAP in October 2006, I held several private-sector positions, including Vice President of General Dynamics Maritime Information Systems and Director of Contracts for Digital System Resources. I served in the United States Navy for 30 years, retiring as a Rear Admiral, Supply Corps. In addition to three tours afloat, I served in a variety of contracting and acquisition positions that included Commander, Navy Exchange Service Command; Deputy for Acquisition and Business Management in the office of the Assistant Secretary of the Navy, Research Development and Acquisition; and Deputy Commander for Contracts, Naval Sea Systems Command.

I'd like to acknowledge Senator McCaskill for her commitment to support of our troops. In addition to authoring the Comprehensive Contingency Contracting Reform

Act, which led to the NDAA provisions we are here to discuss today, Senator McCaskill co-sponsored the legislation that created the Commission on Wartime Contracting, whose efforts spanned from 2008 to 2011 and whose August 2011 final report recommendations were the genesis for some of the legislative provisions in the Comprehensive Contingency Contracting Reform Act.

Department of Defense Support of Commission on Wartime Contracting

The Department is determined to identify, correct, and prevent contracting efforts inconsonant with U.S. objectives in Afghanistan and wasteful of U.S. tax dollars. Senator McCaskill's similar focus led her to sponsor the establishment of the Commission on Wartime Contracting. Given that this Commission's recommendations led to several of the provisions in the NDAA, it seems fitting to mention the Department of Defense's (DoD's) support of the Commission on Wartime Contracting, during the Commission's lifetime. The Department supported fully the Commission's independent study by providing them with personnel, data, interviews, and insights. Some examples of the Department's support to the Commission include:

- The Department designated USD(AT&L) to serve as the focal point to facilitate the Commission's efforts at the Commission's outset in 2008.
- The Department detailed subject-matter experts (SMEs) to augment the Commission's 40-member staff.
- The Department participated in 18 Commission hearings.
- The Department analyzed each Commission publication, including its June 2009 first interim report, February 2011 second interim report, and August 2011 final report, as well as its various flash reports.

The Department's analysis of—and actions to address—the Commission's recommendations were subject to senior DoD leadership review and approval, first under a temporary task force then under a permanent board. The board continues to monitor DoD's action plan to institutionalize operational contract support (OCS) capabilities and capacity.

The Task Force. On July 26, 2009, USD(AT&L) directed the creation of a DoD Task Force on Wartime Contracting to evaluate the Commission's first interim report and report its findings to senior leadership. Using a scorecard, the Task Force found that DoD had been proactive in addressing the Commission's areas of concerns, but that Department-level attention was needed for some issues that were previously being addressed at the Component level.

The Board. In part to ensure Department-level attention to needed improvements, in March 2010, USD(AT&L) created a permanent board to provide strategic leadership to the multiple stakeholders working to institutionalize OCS. The board includes all relevant OCS stakeholders, including USD(AT&L) who is responsible for OCS policy; Joint Staff who is charged with joint OCS planning and formulating doctrine; and the Combatant and Service Component Commanders who have the duty of OCS planning, and selecting organizational options for theater and external contract management and OCS execution. Additionally, the board includes the Under Secretary (Personnel and Readiness [P&R]) and Under Secretary (Comptroller).

The Action Plan. The board measures progress against an action plan for FYs 2013 to 2016 that addresses 142 major actions to close the 10 highest-priority capability gaps, strengthen our ability to execute OCS, and support a Joint Force Commander. This

action plan also contains the Department's internal scorecard for the Commission on Wartime Contracting recommendations, as well as details on the Government Accountability Office (GAO) assessment of DoD's progress in implementing these same recommendations.¹

In short, the Department interacted regularly with the Commission throughout its endeavors and continues to carry the torch to ensure improvements in the way ahead for addressing contracting challenges now, and in the future.

The National Defense Authorization Act for Fiscal Year 2013

The NDAA for FY 2013 contained several wartime contracting reforms; my testimony focuses on those specific provisions highlighted as areas of interest in the subcommittee's invitation letter.

¹ GAO-12-854R (August 2012)

Table 1. Subcommittee's Areas of Interest from Invitation Letter.

Subject	NDAA Section
Review and Justification of Pass-Through Contracts	802
Responsibility within Department of Defense for Operational Contract Support	843
Data Collection on Contract Support for Future Overseas Contingency Operations Involving Combat Operations	844
Inclusion of Operational Contract Support in Certain Requirements for Department of Defense Planning, Joint Professional Military Education, and Management Structure	845
Requirements for Risk Assessments Related to Contractor Performance	846
Extension and Modification of Reports on Contracting in Iraq and Afghanistan	847
Responsibilities of Inspectors General for Overseas Contingency Operations	848
Oversight of Contracts and Contracting Activities for Overseas Contingency Operations in Responsibilities of Chief Acquisition Officers of Federal Agencies	849
Database on Price Trends of Items and Services under Federal Contracts	851
Information on Corporate Contractor Performance and Integrity through the Federal Awardee Performance and Integrity Information System	852
Inclusion of Data on Contractor Performance in Past Performance Databases for Executive Agency Source Selection Decisions	853
Requirements and Limitations for Suspension and Debarment Officials of the Department of Defense, the Department of State, and the United States Agency for International Development	861
Uniform Contract Writing System Requirements	862
Sustainability Requirements for Certain Capital Projects in Connection with Overseas Contingency Operations	1273

Section 802, Review and Justification of Pass-Through Contracts

Section 802 requires the Secretary of Defense, the Secretary of State, and the Administrator of the United States Agency for International Development (USAID) to issue guidance for situations where the offeror intends to award subcontracts for more than 70 percent of the total cost of work to be performed under the contract, task order, or delivery order. The guidance is to ensure that the contracting officer for the contract is required to (1) consider the availability of alternative contract vehicles and the feasibility of contracting directly with a subcontractor or subcontractors; (2) make a written determination that the contracting approach selected is in the best interest of the government; and (3) document the basis for such determination.

Implementation and Next Steps. In May, the Department drafted regulatory language that will implement Section 802's requirements.² Following the standard regulatory review process, DoD anticipates publication of a final interim Federal Acquisition Regulation (FAR) rule before the end of December 2013.

Section 843, Responsibility within Department of Defense for Operational Contract Support

Section 843 requires the Secretary of Defense to prescribe, and issue guidance establishing, the DoD chain of authority and responsibility for policy, planning, and execution of OCS. This invokes DoD-wide equities, from USD(AT&L) to USD(Policy) to the Chairman, Joint Chiefs of Staff. These senior leaders are committed to ensuring that the importance of OCS is inculcated throughout the Department.

Implementation and Next Steps. DoD has identified the policy and doctrine that specify the Department's chain of authority with respect to the policy, planning, and execution of OCS. Fundamentally, guidance and policy are in place to meet each of the elements required in this legislation. Specifically, DoD has published or updated: DoD Directive 3020.49, *Orchestrating, Synchronizing, and Integrating Program Management of Contingency Acquisition Planning and Its Operational Execution*; DoD Instruction 3020.41, *Operational Contract Support*; DoD Instruction 1100.22, *Policy and Procedures for Determining Workforce Mix*; and Joint Publication 4-10, *Operational Contract Support*. Further, in 2011, the Secretary of Defense signed a memorandum, *Strategic and Operational Planning for Operational Contract Support (OCS) and Workforce Mix*, which further clarifies and delineates responsibilities at the strategic and operational levels for planning, resourcing, and integrating contract support.

² FAR Case 2013-012

USD(AT&L) continuously conducts a review of these governance documents to assess whether there can be improvement or clarification of current assigned responsibilities.

Section 844, Data Collection on Contract Support for Future Overseas Contingency Operations Involving Combat Operations

Section 844 requires that, not later than one year after the date of the NDAA's enactment on January 2, 2013, the Secretary of Defense, the Secretary of State, and the Administrator of USAID shall each issue guidance regarding data collection on contract support for future contingency operations outside the United States that involve combat operations. The Department is on track to meet this requirement.

Implementation and Next Steps. DoD guidance is in place regarding data collection on contract support for future contingency operations outside the United States that involve combat operations; and the Synchronized Predeployment and Operational Tracker (SPOT) (the designated common database for contract and contractor information) currently has the functionality to collect and report required data, including a linkage to the data contained in the Federal Procurement Data System – Next Generation (FPDS-NG). DoD Instruction 3020.41, *Operational Contract Support*, issued in 2011, prescribes policy regarding the collection of data related to contract support during future contingency operations. In addition, the Department has completed a draft proposed regulatory revision³ for public comment, to reflect the updated policy and to clarify requirements related to maintaining accurate and up-to-date information in SPOT. The Department will continue to focus on improving compliance and updating the functionality of the common database to increase data accuracy.

³Draft proposed revision to the Defense Federal Acquisition Regulation Supplement, Subpart 252.225-7040, Contractor Personnel Authorized to Accompany U.S. Armed Forces Deployed Outside the United States (2013-D015).

To maintain this capability, DoD must ensure a continued funding stream for SPOT into the future, especially as current contingency operations come to an end. The funding request for SPOT through the Program Objective Memorandum (POM) 13-17 has been submitted.

Section 845, Inclusion of Operational Contract Support in Certain Requirements for Department of Defense Planning, Joint Professional Military Education, and Management Structure

Section 845 requires OCS inclusion in three areas: readiness measurement and planning, joint professional military education, and management structure for procurement of contract services.

Planning. The Chairman of the Joint Chiefs of Staff, in coordination with a number of other individuals, is required to assess OCS capability to support current and anticipated wartime missions, and recommend resources required to improve/enhance support and planning for such OCS. For each major plan, each combatant command submits a Logistics Supportability Analysis (LSA). The LSA includes OCS and is subsequently reviewed and assessed by the Joint Staff. Additionally, each major plan undergoes an additional logistics assessment quarterly through the Global Logistics Readiness Dashboard review.

The Department's strategic planning guidance, which predates this legislation, requires planning for OCS. Thus, the Department complies with this requirement.

Military Education. The Department has ensured that OCS is recognized in joint professional military education (JPME). The Joint Staff and military services have produced doctrine for OCS, which is the basis for joint professional military education. That doctrine is slated for update in January 2014. The Department's philosophy on OCS

military education is that the curriculum for each phase of joint and Service-specific professional military education should include OCS content appropriate for each phase of an officer's professional development and in a manner consistent with doctrine. The Chairman of the Joint Chiefs of Staff (CJCS) derives his authority to shape joint education from Title 10 United States Code (USC) Section 153, and he acts on that authority through his Officer Professional Military Education Policy. Joint Staff Operational Contract Support and Services (OCSS) Division has developed the JMPE OCS Curriculum Development Guide and distributed it to all JMPE institutions. Section 845 has helped DoD and the Services focus on improving OCS coverage in joint professional military education.

Management Structure for Procurement of Contract Services. The Department understands the need to be well organized, trained, and equipped to manage any of our contracts; whether it be stateside or an overseas contingency operation (OCO)—and whether the procurement is for services or supplies. The USD(AT&L), USD(Policy), Joint Staff, USD(P&R), Defense Contract Management Agency (DCMA), Defense Contract Audit Agency (DCAA), Defense Logistics Agency (DLA), USD(Comptroller), and Major Commands—to name a few—to jointly monitor planning, execution, and oversight of the funds appropriated by Congress. This is a true team effort. Each of these organizations brings its own unique subject matter expertise in oversight of contingency contracting that ties back to the resources and expertise of the acquisition system as a whole.

Implementation and Next Steps. The Department has made great strides in the near-term leveraging the work of various task forces and senior-level working groups to

implement new policy, guidance, training; new initiatives to improve management of contractors on the battlefield; and assisting the permanent planning function at Geographic Combatant Commander (GCC) level to ensure their contracting, logistics, and materiel readiness needs are included both now and in the future.

DoD has taken significant steps toward developing and then measuring its OCS capability through the OCS Joint Exercise, or OCSJX, which is scheduled for January 2014. The Department has also taken supporting steps by incorporating OCS throughout joint doctrine; forming new organizations (such as the permanent board mentioned in this testimony's opening); institutionalizing OCS training, guidance, and exercises; and centering material efforts on automation initiatives, such as the SPOT database, Contingency Contracting Website, Defense Contingency Contracting Officer and Contracting Officer's Representative Handbooks, OCS Automated Planning Environment (OCSAPE) effort, and Contingency Acquisition Support Model (cASM). DoD leadership and personnel efforts have also incorporated OCS objectives.

Next steps include rollout of a Joint OCS Planning and Execution Course (JOPEC), publication of annual Chairman's Joint Training Guidance, planned approval of an OCS Joint Concept to identify the essential requirements to guide OCS capability development, briefing on OCS implementation at the World Wide Training Conference, and release of additional OCS guidance.

Our key implementation concern is that, as Operation Enduring Freedom winds down, focus on and funding for OCS may wane. Funding and staffing vary yearly based on interest and sources available. Doctrine, policy, training, education, and planning

guidance have significantly matured over the last 8 years. We are laying the foundation to allow OCS to play an increased role in Title 10 exercises, which are an established means for reporting readiness.

**Section 846, Requirements for Risk Assessments
Related to Contractor Performance**

Section 846 requires the Secretary of Defense to require that a risk assessment on reliance on contractors be included in operational or contingency plans developed by a commander of a combatant command.

Section 846 also requires a comprehensive risk assessment and risk mitigation plan, not later than six months after the commencement or designation of a contingency operation outside the United States with combat operations. The analysis and plan must address operational and political risks associated with contractor performance of critical functions in support of the operation.

The policy coverage required by Section 846 is being addressed in two ways. First, we are including OCS in near-term guidance (via manual) as we undertake the lengthier process of inserting the language into policy (via DoD Instruction and the Code of Federal Regulations [CFR]).

Planning Risk Assessment: Implementation and Next Steps. The 2012 publication of Chairman Joint Chiefs of Staff Manual (CJCSM) 3130.03, *Adaptive Planning and Execution (APEX) Planning Formats and Guidance*, and CJCSM 4301, *OCS Planning* (due for publication in February 2014)—and resulting content in Annex W, OCS, to operation plans and operation orders —will inform the required risk assessment. The revised CJCSM 3130.03 established the requirement to specifically plan for OCS in operations and contingencies. It will take time to assess plans based on the new guidance

within the existing planning and review cycle. DoD will not consider this action complete until OCS planning, risk assessment, and development of risk mitigation plans become habitual to planners and other staff.

Risk Assessments for Contractor Performance: Implementation and Next Steps.

The Department has reviewed current policy outlining planning requirements for occasions when contractor personnel and equipment are anticipated to support military operations. Current policy (DoD Instruction 3020.41 and 32 CFR Part 158) requires military planners to develop orchestrated, synchronized, detailed, and fully developed contract support integration plans and contractor management plans as components of concept plans and operational plans, in accordance with appropriate strategic planning guidance. Policy also requires plans to address the continuation of essential contractor services.

DoD has developed additional language to add to this policy that will reflect the legislative requirement to conduct risk assessments on reliance on contractors. The Department plans to make a minor change to current policy to add the Combatant Commander responsibility to perform the comprehensive risk assessment and develop a risk mitigation plan. In addition, DoD is working with key interagency partners to develop a common risk assessment approach, when applicable.

Section 847, Extension and Modification of Reports on Contracting in Iraq and Afghanistan

Section 847 provides for a two-year extension of the FY 2008 NDAA Section 863 requirement for a joint report on contracting in Iraq and Afghanistan. The new suspense date for the joint report is February 1, 2015. Section 847 also repeals the requirement for

Comptroller General review of such report and edits various elements of the report requirement.

Implementation and Next Steps. DoD will continue coordinating with DoS and USAID as we have over the past few years to produce the report. In April, pursuant to Section 835 of the Ike Skelton National Defense Authorization Act for FY 2011, DoD submitted the report for FY 2012 on behalf of DoS and USAID. In September, DoD will begin collecting and analyzing data and coordinating with DoS and USAID on a timeline for preparing and submitting the joint report for FY 2013. GAO is preparing to issue its review of this year's report to Congress; and DoD will review and implement GAO recommendations as appropriate.

Section 848, Responsibilities of Inspectors General for Overseas Contingency Operations

Section 848 makes appointment of a designated lead Inspector General (IG) a requirement for any designated overseas contingency operation that exceeds 60 days. This provision falls within the purview of the office of the DoDIG.

Implementation and Next Steps. The development of a framework for Section 848 implementation is a complex and challenging endeavor. Challenges include establishing a process for requesting funding to support the activities of the lead IG once a contingency operation is declared; resourcing and manpower considerations, including the ability to surge when needed; maintaining a workforce that is skilled and trained to conduct IG responsibilities in a wide variety of potential contingency operations; and keeping open lines of communication so as to foster relationships between the three agencies' Inspectors General during peacetime. In addition, DoDIG needs to be included

in future DoD/Joint Staff training exercises in order to better maintain OCO oversight capabilities. For example, DoDIG will send observers to the DoD Joint Contracting & Operational Contract Support Readiness Exercise (OCSJX-14), Fort Bliss, TX, in January 2014, to maintain enduring OCS oversight capability.

DoDIG, the Joint Staff, and the geographic COCOM staffs need to establish and maintain coordination of planning. DoDIG will begin coordination office calls with Joint Staff and geographical COCOM planners, to ensure DoDIG is able to deploy within the first 180 days of any future “designated” OCO. DoDIG is coordinating a Lead IG concept plan for exercising Lead IG responsibilities in future OCOs with DoS and USAID IGs, and will execute Memorandums of Agreement (MoAs) for how the three IGs will conduct comprehensive oversight, to include joint projects. The estimated date of plan approval and execution of MOAs is March 1, 2014.

DoD will ensure it includes oversight community requirements in planning for future contingency operations, to include office space, communications, security, and housing. In regard to funding, the Department will work with the DoDIG to determine the appropriate funding for oversight of contingency operations and include those requirements in the DoD request for contingency funding. We will also include the DoDIG in future contingency operations readiness exercises to ensure we understand the level of support required to ensure appropriate oversight in future contingencies.

Section 849, Oversight of Contracts and Contracting Activities for Overseas Contingency Operations in Responsibilities of Chief Acquisition Officers of Federal Agencies

Section 849 expands responsibilities of the Chief Acquisition Officers (CAOs) of Federal Agencies to include advising the executive agency on the applicability of relevant policy on the contracts of the agency for overseas contingency operations and ensuring the compliance of the contracts and contracting activities of the agency with such policy.

DoD is specifically excepted from 41 USC 1702. However, at DoD, the USD(AT&L) is the CAO, and policy related to contingency contracting is under USD(AT&L)'s purview.

Implementation and Next Steps. DoD is exempted from this requirement—but if it were applicable, DoD would be in compliance. The Department will continue to execute DoD CAO responsibilities for policy related to contingency contracting.

Section 851, Database on Price Trends of Items and Services under Federal Contracts

Section 851 requires the establishment and maintenance of a database of prices charged under government contracts to be used for monitoring price developments/trends, cost/price analysis and price reasonableness determinations, addressing unjustified price escalations, and source selections. It requires use of the Director, Defense Pricing pilot project, where appropriate.

Implementation and Next Steps. DoD satisfies this requirement by complying with the requirements of Section 892 of the Ike Skelton NDAA for FY 2011, which calls for a report on the analyses of price trends that were conducted for categories of covered supplies and equipment. The Department submitted reports for FY 2010 and FY 2011, and the FY 2012 report is currently being staffed.

In addition, DoD has expanded the Contract Business Analysis Repository (CBAR) capabilities to assist the acquisition workforce. CBAR facilitates the sharing of information among DoD contracting officers and assists them during preparation for negotiations with contractors. The Department will continue to monitor the execution and implementation of CBAR.

The Department defers to the Office of Management and Budget to address the agency-wide aspects of this provision. The Director, Defense Pricing is undertaking a pilot, and the Department will share information with the Office of Federal Procurement Policy and other appropriate organizations on this initiative. The Director, Defense Pricing together with DCMA, is exploring tools and other resources (such as establishing Defense pricing centers of excellence) to best build and equip the DoD pricing community.

Section 852, Information on Corporate Contractor Performance and Integrity through the Federal Awardee Performance and Integrity Information System

Section 852 requires the Federal Awardee Performance and Integrity Information System (FAPIIS) to include information on any parent, subsidiary, or successor entities of the corporation. This provision enables the government to have insight into the corporate “family tree” structure (e.g., the relationship between any parent, subsidiary, or successor entities).

Implementation and Next Steps. DoD initiated a FAR Case to implement this change and inform contracting officers of the additional information available when awarding contracts. The Department estimates publication of a final FAR rule by December 2014.

Section 853, Inclusion of Data on Contractor Performance in Past Performance Databases for Executive Agency Source Selection Decisions

Section 853 requires the FAR Council, in consultation with USD(AT&L), to develop a strategy for ensuring that timely, accurate, and complete information on contractor performance is included in past performance databases used by executive agencies for making source selection decisions.

Implementation and Next Steps. The Department drafted a proposed FAR rule⁴ to implement this requirement, allowing contractors 14 calendar days to rebut past performance evaluations and requiring that past performance evaluations be included in the database within 14 days. The Department anticipates publication of a final rule by the end of June 2014, following the standard rulemaking process.

In accordance with the new rule, the collection and retrieval systems (CPARS and Past Performance Information Retrieval System—PPIRS) will need to be changed, as the current timeframe for contractor rebuttal is at least 30 days.

Section 861, Requirements and Limitations for Suspension and Debarment Officials of the Department of Defense, the Department of State, and the United States Agency for International Development

Section 861 requires at least one suspension and debarment official (SDO) for each of the armed services and DLA, Department of State (DoS), and USAID, who does not report to the Component acquisition office or IG. The SDO must have adequate staff and resources, document the basis for final decisions, and establish policies for formal referrals of suspension and debarment matters. The Service and DLA SDOs have primary cognizance over this provision.

⁴FAR Case 2012-028

In DoD, Service and DLA SDOs are independent of both acquisition and the IGs. This independence serves the Department well.

DoD Components already have very mature suspension and debarment programs, and each SDO has staff and resources for adequate discharge of his or her responsibilities. Annually the DoD SDO program leads the federal government in terms of the number of actions taken, and the DoD SDOs provide both informal and formal leadership in the various suspension and debarment-related forums, including the Interagency Suspension and Debarment Committee and the DoD Procurement Fraud Working Group, and public-private professional associations, such as the American Bar Association's Section of Public Contract Law, Debarment and Suspension Committee.

Implementation and Next Steps. The Department is working with the SDOs, which have individual policies for consideration of formal referrals and those not formally referred, to reach a consensus and establish a common policy. The target completion for establishing common DoD policy is August 2013.

Paragraph (b) of this requirement refers to duties of the Interagency Committee on Debarment and Suspension, in which DoD participates but is not the lead.

Section 862, Uniform Contract Writing System Requirements

Section 862 requires DoD to establish uniform contract writing system requirements and to implement and require the use of electronic contract writing systems following these requirements.

Implementation and Next Steps. DoD has established standards for purchase requests, contracts, receipts and invoices. Since 2007, we have taken a system-agnostic approach emphasizing standards and internal controls, including requirements for

verification and validation of contract writing systems. These standards and controls have been institutionalized in the DoD Business Enterprise Architecture. This approach recognizes that DoD contract writing systems must operate in a variety of surrounding system and organizational environments, each of which may have its own interfacing requiring systems and financial systems. Rather than specify a system-specific solution that may not be usable in all organizational operating conditions, DoD has applied a standards- and controls-based approach as the best balance of efficiency and effectiveness for meeting its contract writing system requirements. Using this approach, the Department has mandated common output data formats and data sources.

The Defense Components are currently engaged in analysis of alternatives for the next generation of contract writing systems employing business process re-engineering strategies. The result of that analysis will be a set of strategies for migration from the current legacy systems to a newer technical backbone including an enterprise clause logic service. As the analysis is completed (anticipated in early FY 2014), we will turn to budgeting, planning, and acquiring next-generation systems during the period of FY 2014 through FY 2017.

Section 1273, Sustainability Requirements for Certain Capital Projects in Connection with Overseas Contingency Operations

Section 1273 mandates that overseas capital projects for an overseas contingency operation for the benefit of a host country, funded by DoD, DoS, or USAID, cannot be obligated unless the Secretary of Defense, Secretary of State, or Administrator of USAID completes an assessment of the project's necessity and sustainability.

Implementation and Next Steps. The Department conducts an assessment process for covered capital projects overseas (namely, Commander's Emergency Response

Program [CERP] and Afghanistan Infrastructure Fund [AIF] projects) that require Commander CENTCOM approval. Currently, the Office of the Secretary of Defense reviews all CERP projects over \$1 million. In addition, the requirements for Secretary of Defense approval and congressional notification already exist for CERP projects over \$5 million, and for all AIF projects.

The Department chartered the Afghanistan Resources Oversight Council (AROC) in August 2011, charging it with responsibility for ensuring proper planning, execution, and oversight of the funds appropriated for various projects associated with the current overseas contingency operations. AROC was established in accordance with the Senate Committee Report 111-295 to establish a council to oversee funds appropriated to the Afghanistan Security Forces Fund (ASFF). The AROC is jointly chaired by USD(AT&L), USD(Policy) and USD(Comptroller). This council provides oversight for the ASFF, AIF, and CERP. Proper planning, execution, and oversight of the funds appropriated for these programs are essential for good stewardship of these resources. The Department continues to expand the AROC's focus to ensure the success of capital projects. Most recently, AROC has been charged with approving requirement and acquisition plans for ASFF, CERP, and AIF, within certain thresholds.

DoD is preparing thorough assessments for the capital projects that meet the criteria of this section. To date, one assessment has been completed and several more are in progress. In addition, DoD will continue to identify new projects that meet these requirements. All assessments will be completed before obligating or disbursing funds. Our first semi-annual report required by Section 1273 will be submitted by October 31, 2013.

DoD takes seriously the Committee's concern about the sustainment of capital projects, particularly in Afghanistan, and is fully implementing the new reporting requirements outlined in this section.

Conclusion

In conclusion, I wish to reiterate the Department's appreciation for your continued commitment to improving contingency contracting. Like you, the Department is focused on meeting the warfighters' current and future needs while judiciously managing DoD resources and balancing risk. Much has been accomplished, but of course challenges remain. We are not complacent and acknowledge we still have more work to do. We appreciate the prior work of the Commission on Wartime Contracting and the ongoing work of this Subcommittee in maintaining a focus on this critical area. We welcome Congressional interest in this topic, as evidenced by Senator McCaskill authoring the Comprehensive Contingency Contracting Reform Act, and the passage of wartime contract reform language in the NDAA for Fiscal Year 2013. I thank you for the opportunity to provide you with the Department's progress in implementing wartime contracting reforms.

**Testimony of Patrick F. Kennedy
Under Secretary of State for Management**

**Before the
U.S. Senate Homeland Security and Governmental Affairs Committee
Financial and Contracting Oversight Subcommittee
on Implementation of Wartime Contracting Reforms**

July 16, 2013

Good morning Madam Chairwoman, Senator Johnson, and distinguished members. Thank you for inviting me here today to testify about the Department of State's implementation of contingency contracting provisions in the FY 2013 National Defense Authorization Act. I know that contingency contracting has been of interest to the Committee for years, and is a particular interest to the Chair. With about \$8.2 billion in total contracts, State takes all of its contracting responsibilities very seriously and is always seeking improvements.

Section 850 Report

Directly after the enactment of the FY 2013 NDAA, State formed three working groups to focus on the following:

- 1) how to assess the risks associated with contracting in overseas contingency operations and other high risk environments;
- 2) our contracting management procedures; and
- 3) the structure and capabilities of our acquisitions and contracts management workforce.

Each working group was comprised of subject matter experts in key policy areas such as procurement and acquisitions, human resources, training, and security. The results of analysis by the working groups were incorporated into the report required under **Section 850** of the NDAA, which State delivered to the Congress on June 25. In that report, the working groups found that State's structure and processes support our national security mission. We have also concluded that the use of our centralized acquisitions office based in Washington, D.C., supported by

two overseas Regional Procurement Support Offices, support our contingency contracting requirements.

The working groups continue to meet to advance the Department's implementation of the NDAA provisions. And we are working with GAO on their engagement requested under Section 850.

Continued Improvements

However, the Department continues to take steps to improve and elevate the status of its contracting program. Using our Working Capital Fund, and the 1 percent charge on each contract, the Office of Acquisitions Management continues to hire contracting staff.

We have placed more emphasis on increasing the number of **Contracting Officer Representatives (CORs)** in our regional and functional bureaus to perform day-to-day contract oversight. The Department created a skills-based, adult learning centered Contracting Officer Representative (COR) course to improve COR performance. The Department established a COR Advisory Board to identify and share best practices and continually improve the COR function. A database has been established to track COR certification and which allows Contracting Officers and bureaus to identify qualified CORs. Assistant Secretaries must certify as part of their annual Management Assurance Statement that adequate contract administration resources have been identified on service contracts with annual expenditures exceeding \$25 million.

We continue to work with both DoD and USAID on contingency contracting. DoD logisticians are collocated in our Office of Logistics Management. A DoD liaison working in the Bureau of Diplomatic Security (DS) has improved interagency communication and collaboration. We believe that DoD liaisons should be a regular part of on-going interdepartmental coordination regardless of the status of any current contingency.

State is establishing a Contract Management Office in Kuwait that will support our operations in Iraq and could serve as a model for future contingencies.

The appointment of a lead Program Manager/COR to manage all CORs overseeing operations and maintenance and basic life support task orders in Iraq will provide effective oversight.

Staffing the office with specific technical skills and identifying individuals with previous U.S. government COR experience represents a continuing challenge that must be addressed creatively through supervisory CORs, training, mentoring, “reach back” advice, detailed inspection/acceptance planning, interagency support, and other means specifically tailored to the contingency.

State will examine how to use existing human resources flexibilities, such as recruitment, retention, and relocation incentives to ensure expedient, high-priority hiring for contract oversight functions. Congress can assist State’s ongoing efforts by providing special hiring authorities to staff future contingency operations. Such authorities include permanent direct hiring authority and flexibility on personal services contracting to include the acquisition support function domestically and overseas. State continues to advocate for a legislative proposal to expand and make permanent a dual compensation waiver authority for Foreign Service and Civil Service annuitants serving in qualified State positions.

In an area flagged by GAO for improvement, State issued guidance to strengthen the management of interagency acquisition agreements and is working with DoD to establish overall coordinating agreements. A lead for interagency agreement coordination will be established at the outset of future contingency operations.

By institutionalizing the lessons learned from Iraq and Afghanistan (such as enhanced program oversight, higher contractor performance standards, and improved management processes), and preparing for future contingencies, State will enhance its ability to respond to such future events.

NDAA Sections

As required under **Section 844**, State has examined its use of SPOT – the Synchronized Pre-Deployment Operational Tracker --- to collect and report on

contract data. State, USAID, and DoD believe that SPOT remains the preferred system for tracking personnel under contingency contracts. Of the 8 elements listed in Section 844, numbers 6 through 8 are compiled in SPOT. Numbers 1 through 5 can be found in the existing publicly available Federal Procurement Data System (FPDS), the official reporting tool on contracts. State is working with DoD to integrate data from FPDS automatically into SPOT. And we are working both with the interagency and our contractor community to improve the quality of data in SPOT for the personnel information, particularly for contractors killed and wounded, an area that was identified as needing improvement. We continue reporting on SPOT to Congress, along with DoD and USAID, per **Section 847**.

We have been evaluating our risk management process, under **Section 846** of the NDAA. In the event of a Title 10 contingency such as Iraq or Afghanistan, our regional bureau, our functional bureaus, and the mission in that country will weigh the risks of contracting for security, life support, and other services. While we have been undertaking this evaluation for the past 10 years, particularly with DoD as a partner in Iraq and Afghanistan, we are looking at more formally establishing a centralized unit at State to coordinate in assessing and mitigating the risks associated with the use of contractors in contingency and high-risk environments. Also, when State must enter an area of conflict, an example being Syria where we previously suspended operations, we will use a support cell concept to assess risk.

The new responsibilities of Chief Acquisition Officer (CAO) added by **Section 849** have been specifically incorporated within the list of responsibilities of State's CAO.

Under **Section 861**, we now have a designated Suspension and Debarment Official (SDO), who is supported by a newly added Suspension and Debarment (S&D) Program Manager. The S&D manager works only on S&D matters and manages the referral and analysis process. Both the SDO and the S&D Program Manager work closely with our Office of the Legal Adviser and State's Office of Inspector General (OIG). The SDO is not part of either the OIG or the Office of Acquisitions, as stipulated by the NDAA.

GAO has indicated that successful S&D programs have dedicated resources, detailed policies, and a referral process. State has all three of these, and we have gone from 0 suspensions and 2 debarments in FY 2008 to 3 suspensions and 31 debarments to date in FY 2013. We believe the resources are adequate, but we will continue to evaluate our needs as our program activity evolves and will adjust as necessary. We have a referral process that has expanded to include examination of terminations and outreach to the front line contracting and grants officers, as well as Contracting Officer Representatives (CORs). We meet with the OIG quarterly on debarment and suspension to improve referrals and to status actions. Our timeliness has improved consistently, from 135 calendar days in FY 2010 to 25 calendar days in FY 2013. We are also implementing a better case management system to track activity.

Several sections of the bill promote government wide changes, and require these sections to be incorporated into the Federal Acquisition Regulation (FAR). State is an active member of the Civilian Agency Acquisition Council (CAAC) and is working through the CAAC with the Federal Acquisition Regulatory Council on these matters. These sections include:

- **Section 802** on Review and Justification of Pass-Through Contracts where a FAR Case (FAR Case 2013-012) was opened to incorporate this provision in the FAR.
- **Section 852** on Information on Contractor Performance and Integrity through the Federal Awardee Performance and Integrity System (FAPIIS) where a FAR Case (FAR Case 2013-020) was opened to implement the collection of this additional information on the corporation awarded the contract or grant. FAPIIS was originally launched in 2010 as a public repository for performance and integrity information and this expansion will provide additional information about the awardee of the Federal contract (or grant).
- **Section 853** on Inclusion of Data on Contractor Performance in Past Performance Databases for Executive Agency Source Selection Decisions. Several FAR Cases (FAR Case 2012-009 and 2012-028) have been opened to

implement this provision to improve the timely reporting and collection of past performance evaluation data on a government-wide basis. These FAR cases support OFPP's leadership in this area and align with their March 2013 past performance memorandum which directed agencies to improve their management accountability and timeliness and quality reporting of past performance information. At the State Department, we are also supporting this effort and recognize the need to improve contractor performance reporting in government-wide databases under Section 853, so the Department is working toward that end. A working group has been established to focus on improving the process which includes improving timely and quality reporting of performance evaluations reports in the databases. Points of contact have been identified in various offices and bureaus to increase accountability. Contracting Officer Representatives (CORs) are advised of past performance reporting responsibilities and training is provided. A new requirement will ensure that Contracting Officers request a past performance assessment prior to exercising contract options.

Under **Section 862**, the State Department is working with the Office of Federal Procurement Policy and an interagency group in the development of standards to ensure continued alignment of the agency's existing contract writing system with any new government-wide data standards that might be developed. While a FAR case has not been opened on Section 862, separate FAR cases are underway to standardize other contract reporting elements such as those to standardize the uniform line item numbering structure; for the use of Uniform Procurement Identification numbers; and for the use of Commercial and Government Entity Code.

Under **Section 1273**, the Department of State will undertake assessments to ensure that a capital project that is to benefit a host country is requested by the host government and can be sustained by it. The sustainability of our foreign assistance investments is something we take very seriously to ensure the effective use of our resources. We have been discussing the assessment process with USAID to see how USAID undertakes its 611(e) assessments to evaluate and determine best practices. To date, since the enactment of the 2013 NDAA, State has not

undertaken any capital projects that would trigger the need for an assessment. We will report semi-annually as required under this section.

Private Security Contractors – Embassy Kabul

I know that the Chair has remained concerned about the use of private security contractors to provide security services at our posts in contingency areas such as Kabul. Department staff have discussed with your staff issues that arose during the summer 2012 transition of the static guard contract in Kabul, and I will be glad to answer any questions that you have today.

The Department has a long history of using contract guards for protection of facilities and personnel stretching back to the 1970s, with enhanced capabilities in the 1990s. Private security contractors (PSCs) are critical to our readiness and capability to carry out American foreign policy under dangerous and uncertain security conditions. Maintaining this capability is particularly important when the Department is taking on expanding missions in contingency operations environments or areas that are transitioning from periods of intense conflict, such as in Iraq and Afghanistan.

We fully appreciate the need to have robust oversight of our PSCs. Contractors are operationally overseen and contractually managed by direct hire Department of State personnel, and we have instituted cultural training requirements, and contractor behavioral standards of conduct to ensure the professionalism of PSC personnel. The Bureau of Diplomatic Security (DS) is staffed to properly oversee PSC compliance with these contractual requirements in Iraq and Afghanistan. Actions for management, oversight, and operational control of contract personnel include:

- DS Special Agents at each post in Iraq and Afghanistan serve as managers for the Static Guard and Personal Protective Security programs;
- DS Special Agents at each post also serve as Contracting Officer's Representatives (CORs) and Assistant CORs (A/COR) for the direct management and oversight of the Worldwide Protective Services (WPS) contract;

- DS personnel at each post are assigned as Government Technical Monitors (GTMs) to assist the COR and A/COR in the oversight of the WPS contract;
- DS personnel provide direct operational oversight of all protective motorcades in Iraq and Afghanistan;
- DS personnel continue to conduct frequent, unannounced health and welfare after-hours visits to WPS housing compounds. Collocation of contractor life support areas on Embassy, Consulate or other compounds enhances after-hours oversight of contractor personnel;
- Revised mission firearms policies strengthen rules on the use of force and new less-than-lethal equipment has been fielded as a means to minimize the need for deadly force;
- Video recording systems and tracking systems installed in vehicles to enhance oversight and contractor accountability;
- All incidents involving a weapons discharge and/or other serious incidents are thoroughly investigated by the Regional Security Office.
- Revised standards of conduct are in place, including a ban on alcohol.

Issues will always arise during times of contract transition, but currently in Kabul, we have a well-managed, effectively functioning contract in place that provides security services to protect our people and facilities.

In conclusion, while we believe that State's contracting function is organized to effectively undertake both routine and contingency contracting, we have been striving to learn from past practices and to better implement contingency contracting, especially with guidance of the 2013 NDAA provisions. The State Department will continue to refine its processes, procedures, and strategies to ensure that adequate resources and oversight mechanisms are in place for future contingencies.

I will be happy to answer any questions you have.

STATEMENT BY
Aman S. Djahanbani
Senior Procurement Executive and
Director, Office of Acquisition and Assistance, Bureau for Management,
United States Agency for International Development

BEFORE THE
Homeland Security and Governmental Affairs Committee
Subcommittee on Financial and Contracting Oversight
United States Senate

July 16, 2013

Chairman McCaskill, Ranking Member Johnson, and distinguished members of the Subcommittee, thank you for the opportunity to discuss how the United States Agency for International Development (USAID) is implementing the wartime contracting reform provisions passed into law in the Fiscal Year 2013 National Defense Authorization Act (NDAA).

USAID welcomes the Subcommittee's continued interest in these matters. Over the last several years the Agency has undertaken a series of operational and institutional reforms designed to transform the organization into a more efficient, effective, and accountable development enterprise. Reforming our Acquisition (contracts) and Assistance (grants and cooperative agreements) processes, particularly those regarding contingency contracting, is a key element of this reform agenda, known as USAID Forward. Many of these changes are in line with the recommendations of the Subcommittee and of the Commission on Wartime Contracting (CWC) that Senator McCaskill and Senator Webb were instrumental in creating.

As an example, the Agency has taken steps to enhance and elevate the independent authority of the suspension and debarment official (SDO) at USAID, a key interest of the Subcommittee and one of the changes urged by the CWC. While we believe that our current structure meets the statutory requirements pertaining to the SDO functions, we understand and fully support the need for greater autonomy of that official. As such, USAID is transferring the duties of the SDO from the procurement office to a Senior Deputy Assistant Administrator within the Bureau for Management. All policies are in the revision process to enact this change, and we expect it to be finalized shortly.

In another example of our continued commitment to accountability and recognition of the need for strengthened oversight, Administrator Shah has established a new senior management review process to ensure that large awards fulfill several accountability criteria. Effective July 9, 2013, Assistant Administrators will validate that planned Acquisition or Assistance actions at or above \$25 million in total estimated cost meet these new criteria before approving the issuance of solicitations. The Administrator himself will provide the final authorization to make an award at

or above \$75 million. These reviews will increase senior management engagement and accountability for acquisition and assistance, ensure more rigorous project design and costing standards, establish greater linkages between Washington and field activities, and result in more effective implementing mechanisms.

In addition to the new accountability policy, USAID continues to place a strong emphasis on oversight and strong stewardship of taxpayer funding:

- Since USAID's last appearance before this Subcommittee, our Compliance Division has recommended 83 further suspension or debarment actions to the SDO, who has approved all of them.
- USAID has created a corporate-level Acquisition and Assistance (A&A) plan that allows us to see all procurements across the Agency's worldwide operations. This plan has helped create stronger implementing mechanisms and brought greater transparency into the Agency's subcontracting plans.

USAID remains committed to enhancing the sustainability of our programs, ensuring the highest levels of accountability, and promoting maximum transparency. USAID Forward was designed to enable the United States to better help countries stand on their own feet, so that aid from American taxpayers is no longer needed. We continue to internalize lessons learned in contingency operations, and we thank the Subcommittee for its continued support and interest in this effort.

As you requested, I will now turn to describing how the Agency is implementing the provisions within the FY13 NDAA that directly impact USAID.

Review and Justification of Pass-Through Contracts (Sec. 802)

A Federal Acquisition Regulation (FAR) rule (FAR Case 2013-012, Review and Justification of Pass-Through Contracts) is currently in process, which will implement Section 802 to all agencies governed by the FAR, not just those in the legislation. In the interim, until the new rule takes effect, in my role as Director of the Bureau for Management's Office of Acquisition and Assistance, I have issued a Policy Directive (AAPD 13-01) to immediately apply the new requirements. When the new FAR rule implementing Section 802 becomes effective, that rule will take precedence and the Policy Directive will be rescinded.

Additionally, there is existing language in FAR (FAR 52.215-22) which requires offerors that intend to subcontract more than 70 percent of the total cost of the contract, task order or delivery order, to identify in their proposals the amount of indirect costs and profit/fee applicable to the work performed by the subcontractor. The same FAR section also requires offerors to submit a description of the added value that the offeror will be providing, as it relates to the work proposed for those subcontractors. The Contracting Officer is required to analyze that information and either accept or reject the offeror's value added assessment.

Data Collection on Contract Support for Future Contingency Operations (Sec. 844)

The 2008 NDAA required that the Department of Defense (DoD), the Department of State (State), and USAID identify common databases to serve as repositories of information on contracts in Iraq and Afghanistan. The parties agreed to use the Synchronized Pre-Deployment and Operational Tracker (SPOT). USAID believes SPOT should remain the system of record for contractor personnel deploying to contingency environments and is currently using this system to track personnel in Iraq and Afghanistan. Policies are in place for both Iraq and Afghanistan requiring contractors and recipients to report personnel data in SPOT.

USAID is continuing to work with DoD and State on reporting issues related to the number, value, and competition of contracts, which are currently tracked by the Federal Procurement Data System-Next Generation (FPDS-NG) and annually certified by department and agency Heads of the Contracting Activity for accuracy. In addition, USAID would pull information from the Federal Assistance Award Data System (FAADS) for assistance awards. This ensures consistency, commonality, and transparency in the respective Agency source data, while accommodating the differences between acquisition-only and acquisition and assistance departments and agencies.

USAID already has policy and business processes in place assuring our capability to report data regarding the number, value, and competition of contracts. USAID's awards are processed through our Global Acquisition and Assistance System (GLAAS), the Agency's contract writing system, which interfaces with FPDS-NG and the FAADS and is supported by extensive training provided to staff. If the recommendation is agreed upon by all Agencies, USAID will issue or revise guidance as necessary to reflect any changes to the DoD/State/USAID Memorandum of Understanding (MOU).

Finally, to the extent the systems discussed above do not capture data required by Section 844 we will work on developing a system to incorporate these required data elements.

Requirements for Risk Assessments Related to Contractor Performance (Sec. 846)

USAID is establishing a working group to determine the best way to incorporate the requirements for comprehensive risk assessment and risk mitigation plans for future contingency operations. Of course, we are also currently involved in a contingency operation in Afghanistan, where we have learned some very hard lessons over a decade of work. We face formidable challenges as we strive to meet the highest standards of accountability in a war zone, so in addition to the regular oversight USAID undertakes in all countries with which we work, in fall 2010 we launched the Accountable Assistance for Afghanistan (A3) initiative to further protect taxpayer dollars from being diverted from their development purpose.

The A3 initiative consists of:

- Award Mechanisms – We are utilizing awards that provide the most visibility on project costs and limiting layers of subcontracts.
- Partner Vetting – We are conducting investigative checks on non-U.S. companies and key personnel working on USAID projects. We have completed over 1,400 vetting requests, and, to date, 30 ineligibility findings have been reached. Through this vetting, we have kept \$25.7 million from being awarded to parties associated with malign actors.
- Financial Controls – We aim to audit 100 percent of all locally incurred costs as extra measures to identify fraud and abuse, and are enhancing controls on project funds, such as using electronic funds transfers in lieu of cash payments and ensuring close review of recipients/contractor's claims prior to payment.

In particular, building on best practices and lessons learned from other USAID efforts in Iraq, West Bank/Gaza, and Pakistan, USAID/Afghanistan is developing a remote monitoring program that will integrate a number of approaches to ensure oversight of our projects, including the use of third party monitors, mobile and satellite technology, surveys, etc. Through remote monitoring, USAID will be able to obtain sufficient, accurate and verified information to allow the Agency to make well-informed decisions about its portfolio, target programming address gaps in assistance, avoid costly duplication, and mitigate risks.

As you know, there are also multiple agencies, including the Government Accountability Office, the Special Inspector General for Afghan Reconstruction, and the USAID Inspector General that perform oversight of USAID's activity in Afghanistan. Collectively these entities have completed over 120 audits of programs in Afghanistan since October 2010. These financial and performance audits complement and reinforce our own efforts to ensure U.S. funds are used effectively and efficiently. In fact, USAID began the Accountable Assistance for Afghanistan initiative to better respond to and correct problems identified during audits. USAID welcomes the oversight and discipline imposed by audits, including those initiated at our request.

Extension and Modification of Reports on Contracting in Iraq and Afghanistan (Sec. 847)

USAID has provided and will continue to provide required data for the joint report. In my role as Director of the procurement office, I have issued Policy Directives for application in both Iraq and Afghanistan mandating contractual clauses requiring the reporting of the necessary information. Additional policies and guidance will be issued for future contingency operations as needed.

Responsibilities of Inspectors General for Overseas Contingency Operations (Sec. 848)

USAID's Office of Inspector General (OIG) plays a key role, in both normal operations and contingencies, in improving the effectiveness and efficiency of USAID's programs and in

protecting taxpayer funds from waste, fraud, and abuse. The OIG does this through performance and financial audits and reviews as well as investigations. In contingencies, the OIG has intensified its oversight efforts by establishing dedicated country offices with an increased complement of auditors and by redoubling its outreach and coordination with oversight and law enforcement partners. The OIG's oversight is welcome, as it provides an added level of scrutiny that makes USAID's work more accountable and transparent. With regards to this specific provision, which would provide for the establishment of a "lead IG" in contingency operations, I defer to the OIG for comment.

Chief Acquisition Officer Responsibilities for Contract Oversight in Contingency Operations (Sec. 849)

Although USAID is not statutorily required to have a Chief Acquisition Officer (CAO), I effectively carry out the duties of a CAO in my role as Director of the Bureau for Management's Office of Acquisition and Assistance (M/OAA). The additional responsibilities and duties of the CAO outlined in this section have been formally added to my responsibilities in USAID's internal regulations.

Reports on Responsibility within the Department of State and USAID (Sec. 850)

USAID prepared and submitted on July 2, 2013, an assessment as required by this section.

In contingency environments, USAID works with the Departments of State and Defense to stabilize countries and build responsive local governance. USAID also eases the transition from active conflict challenges to long-term development goals by investing in agriculture, health systems and democratic institutions. Given that USAID works on a daily basis in insecure countries characterized by many of the same conditions found in contingency operations, USAID's roles and responsibilities for acquisition policy, planning, and execution are in existence and can be easily applied when necessary in contingency operations. Nevertheless, the Agency has identified the steps needed to strengthen some areas, and ensure availability of adequate data and processes for reporting. These areas include:

- Improvements in policy and procedure related to data collection through the Synchronized Pre-Deployment Operational Tracker (SPOT);
- Contractor performance reporting in government-wide databases to meet requirements of the Office of Federal Procurement Policy in the Office of Management and Budget;
- Conducting risk assessments on the use of contractors to meet NDAA Sec. 846 requirements; and
- Sustainability assessments for capital projects to meet NDAA Sec. 1273 requirements.

USAID has employed a number of mechanisms to address these issues, which are outlined more thoroughly in the Section 850 report.

Information on Corporate Contractor Performance through FAPIIS (Sec. 852)

The provision requires a modification to the Federal Awardee Performance and Integrity Information System (FAPIIS) to include fields for information on parent, subsidiary, and successor entities. We understand that the FAR Council opened a case (FAR Case 2013-020, Information on Corporate Contractor Performance through FAPIIS) to implement the collection of this additional information on the corporation or organization awarded the contract or grant. We stand ready to work with the FAR Council on steps to implement this requirement and associated efforts to augment the functionality of FAPIIS.

Inclusion of Data on Contractor Performance in Past Performance Databases (Sec. 853)

This provision requires the FAR Council to develop a strategy for strengthening the collection and use of past performance information. At USAID, we are committed to the effective collection and use of past performance information, since the Agency believes it is a critical part of the USAID acquisition process. Because past performance ensures that the Agency is working with the best possible partners to receive work products and services to meet our programmatic and operational needs, the Agency has elevated past performance to one of its highest priorities. In accordance with OFPP's March 2013 management guidance, USAID has established quarterly targets for improving timely reporting in the past performance databases and made significant progress in reaching these targets. At the end of 2010, USAID past performance reporting was only 7.8%. We are now at 24%, and are well on our way towards meeting the 65% reporting goal for calendar year 2013 established by OMB/OFPP and the 100% goal by CY 2015. To reinforce these efforts, we have been working with the FAR regulatory drafters on government-wide regulatory changes called for by section 853 which, among other things, (i) establish standards for timely submission of past performance assessments in the Past Performance Information Retrieval System (PPIRS), (ii) strengthen assignment of responsibility and management accountability for submitting assessments, (iii) ensure past performance submissions are consistent with award fee evaluations, where appropriate, and (iv) require that past performance evaluations be included in the PPIRS database within 14 days.

Requirements and Limitations for Suspension and Debarment Officials of the Defense Department, State Department and USAID (Sec. 861)

USAID recognizes and fully supports the need for an independent and autonomous authority for suspension and debarment decisions.

A dedicated unit within M/OAA, known as the Compliance Division, is responsible for making recommendations to the SDO regarding formal and informal referrals after approval of the legal sufficiency of the action by the Office of General Counsel. Independence is imbedded in this

process in that the staff develop the recommendations and the SDO is responsible for reviewing and approving those recommendation based on his/her own discretionary authority.

While this process has been working well, USAID supports the intent behind the legislation to strengthen and elevate the independent authority of the Agency's SDO even further. As mentioned earlier, the Agency has effectively moved the SDO function out of M/OAA and given the roles and responsibilities of the SDO to a Senior Deputy Assistant Administrator in the Management Bureau. The Agency is in the process of revising all necessary policy documents to enact this change.

I would like to note that prior to the establishment of the Compliance Division, in October 2009, USAID's Office of Inspector General (OIG) made 12 recommendations to M/OAA to help it strengthen the Agency's suspension and debarment process. USAID has implemented all of these suggestions, a fact confirmed by the 2012 follow-up audit by the OIG, which concluded with a positive report and zero recommendations.

Uniform Contracting Writing System (Sec. 862)

This provision requires OFPP to develop standards for agency contract writing systems. USAID is working with OFPP as a member on the interagency group that is reviewing the development of standards needed to ensure continued alignment of the agency's existing contract writing system with any new government wide data standards.

At USAID, we currently utilize the Global Acquisition and Assistance System (GLAAS). GLAAS is a worldwide, web-based system that manages awards throughout USAID's A&A lifecycle, including reporting and administration. We look forward to working with the interagency group and OFPP as these efforts progress.

Sustainability Requirements for Capital Projects in Contingency Operations (Sec. 1273)

USAID is establishing a working group to determine the best way to meet the sustainability requirements for certain capital projects for future contingency operations in a manner that is consistent with the requirements of section 1273. USAID will submit reports where statutorily required.

For current operations, USAID is ensuring that our offices in Afghanistan and Iraq are meeting the spirit and intent of the legislation. While USAID incorporates sustainability into all its programs worldwide, given the unique context of Afghanistan, USAID developed a specific Sustainability Guidance issued in June 2011, which aims to ensure that USAID's programs are sustainable and closely aligned with U.S. and national priorities. According to the guidance, every program must, to the extent possible, contribute to three areas:

- (I) Afghan ownership and capacity;

- (2) increased stability and confidence in the Afghan Government; and
- (3) program and cost effectiveness.

As a result of this guidance, USAID/Afghanistan has incorporated sustainability analysis into its project design process – each project must now develop a thorough sustainability plan during the design phase. USAID, in cooperation with the Afghan Government, also conducts regular portfolio reviews to ensure that programs align with Afghan priorities as well as with sustainability objectives. Through these detailed reviews and discussions, USAID is focused on delivering programs with the best prospects for sustainability. These include economic growth projects that will increase jobs and incomes while enhancing Afghan Government revenues, enabling the Afghan government to increasingly fund its own recurrent costs.

Reorienting our approach to focus on sustainability in Afghanistan has produced impressive results. For example, the Afghan national power utility, Da Afghanistan Breshna Sherkat (DABS), has made dramatic progress. In large part due to managerial and process improvements resulting from USAID's mentoring and capacity building program, DABS has increased its revenue since 2010, from \$137 million to \$228 million in 2012. As a result, the subsidy that DABS has been receiving from the Ministry of Finance has been declining each year: \$40 million in 2010; \$30 million for 2011; \$16 million for 2012; and \$10 million for 2013, the final year for the subsidy. If DABS continues on this path of improvement, we expect that it could be commercially viable and financially self-sufficient in the next three to five years.

Section 1273 also aligns very closely with Section 611(e) of the Foreign Assistance Act of 1961 (codified in 22 USC 2361 (e)). Section 611(e) provides that whenever certain types of funds are proposed to be used for a capital assistance project exceeding \$1 million, the head of the Agency must take into consideration the Mission Director's certification as to the capability of the country to effectively maintain and utilize the project. This requirement is implemented through inclusion in the statutory checklist, completed during project design as a pre-obligation requirement to ensure that USAID's programs and operations comply with legal restrictions. Further, sustainability is woven throughout our Country Development Cooperation Strategy process and project design policy in USAID's Automated Directive System (ADS) 201.

Conclusion

As an Agency, we are pleased with our progress made on improving contracting in contingency operations, and welcome the reforms that the CWC recommendations and NDAA provisions have produced and inspired. We believe they have strengthened our already deep commitment to transparency, accountability, and sustainability. USAID's acquisition and assistance portfolio is without question stronger as a result.

Thank you for providing me with this opportunity to appear before you. I will be pleased to answer any questions that you have.

Patrick Kennedy
July 16, 2013

Senator McCaskill: I don't think anybody realizes that your testimony just now in my world balloons should have dropped from the ceiling, because when I started in this, no one knew -- no one knew any of that. So that is a really good sign.

Now, what we do with that becomes even more important. If once we get reliable data, then all the excuses about failure to oversee kind of become even more lame.

Secretary Kennedy, do you have the same kind of data available to you?

Under Secretary Kennedy: I have -- I brought -- I brought our F.Y. '11 and F.Y. '12 totals with me, Senator. I'd be glad -- I can easily gin up a F.Y. '13 to date and send you, but I didn't bring a snapshot today. But we can hit the machine and make it -- and make it talk to us.

(CROSSTALK)

KENNEDY: But I can give you F.Y. '11 and F.Y. '12's...

MCCASKILL: Broken out by security personnel versus contractors?

KENNEDY: For example, in F.Y. -- in F.Y. '12, the total number of contractor personnel for the Department of State in Afghanistan was 1,878 and 809 were performing security functions. And I also have those for Iraq.

The numbers are represented in the chart below.

FY	Country	Total Contractors	Performing Security
FY 11	Afghanistan	2825	1706
	Iraq	5311	2389
FY12	Afghanistan	1878	809
	Iraq	4449	2039
FY 13	Afghanistan	3582	2781
	Iraq	5532	1885

Hearing Date: Jul 16, 2013
Hearing: Implementation of Wartime Contracting Reforms
Member: Senator Johnson
Insert: (Page 57, Line 11)
Witness: Director (DP&AP) Ginman
File Name: SHSGAC-02-001-IFR

(The information follows):

The Department uses Private Security Contractors (PSCs) to protect people, activities, and essential property from violence including terrorism. PSCs are not replacements for soldiers and in many cases are used where soldiers may be problematic, such as the protection of civilian reconstruction projects and the movement of civilian supplies where we do not want a military presence. Even when PSCs guard a military installation or the movement of food and fuel destined for our troops, the mission is to protect these activities from trespass or attack, not to engage the enemy through firepower and maneuver.

Ultimately the commander decides if it is more appropriate to use PSCs rather than soldiers based on the operational needs and specific requirements of the particular mission. Cost has not been a precluding factor in making that decision.

In Iraq and Afghanistan, it is less expensive to hire armed guards than to use soldiers to provide security. In Iraq in 2009, the average fully loaded cost of security personnel, including senior supervisors was approximately \$22,000/year. (The fully loaded cost includes salary, Defense Base Act insurance coverage, other direct costs, and overhead.) In Afghanistan, the average salary for static security guard is approximately \$7,500/year. (The fully loaded cost is approximately \$18,000/year.) The latest composite annual reimbursable rate for an E-5 is \$76,381.

Reimbursable military rates are found at http://comptroller.defense.gov/rates/fy2012/2012_k.pdf



OFFICE OF FEDERAL
PROCUREMENT POLICY

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

July 15, 2013

The Honorable Claire McCaskill
Chairman
Subcommittee on Financial and Contracting Oversight
Committee on Homeland Security and Governmental Affairs
United States Senate
Washington, DC 20510

Dear Chairman McCaskill:

Thank you for your letter requesting additional information regarding the steps that the Office of Federal Procurement Policy (OFPP) and the Federal Acquisition Regulatory Council (FAR Council) are taking to address certain requirements of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013. The information below discusses efforts taken to implement provisions of the NDAA and improve Federal acquisition management.

Sec. 851, Database on Price Trends of Items and Services under Federal Contracts -
Section 851 requires OFPP to establish and maintain a database of pricing information for items and services. Developing a prices paid database is critical to ensuring that contracting officers and program managers have the information needed to negotiate contracts in the best interest of the taxpayer, and it is a top priority for OFPP. OFPP engaged with the General Services Administration (GSA) and with the Department of Defense (DoD) to understand what is currently being collected and what technology is already available for use. We are developing a government-wide pilot for a limited number of commodities, such as certain information technology (IT) products, and expect to have preliminary functionality ready for use shortly.

As required by the statute, OFPP is working with DoD to learn lessons from their experiences implementing a pricing tool pilot, and OFPP is also taking advantage of the good work that GSA is doing. For example, GSA is already capturing pricing for two Federal Strategic Sourcing Initiatives – Office Supplies II (OS2) and Domestic Delivery Services (DDS 2) – and is also capturing certain IT commodity pricing on several recently-awarded vehicles. Additionally, we are working with two Presidential Innovation Fellows (PIF), who are dedicated to helping make this pilot a reality. Through the PIF program, OFPP has access to expertise and innovation in both project management and systems development, and the PIFs are currently analyzing gaps in the existing capabilities and taking quick actions to begin creating the portal.

Sec. 852, Information on Corporate Contractor Performance through Federal Awardee Performance and Integrity Information System (FAPIIS) – Section 852 requires a modification to FAPIIS to include, to the extent practicable, information on any parent, subsidiary, and successor entities to the corporation. The Federal government's acquisition workforce has an obligation to the American taxpayer to do business with companies that will place a premium on performance and quality

and not do business with firms who seek to abuse or misuse Federal funds. When it was launched in the spring of 2010, FAPIIS provided contracting officers - for the first time - with one-stop access to a range of information to help them make more informed evaluations of the responsibility of prospective contractors. Implementation of Section 852 will build on these efforts by giving the acquisition officials using the database a broader picture of the performance and integrity of the corporation carrying out or awarded the Federal contracts (or grants).

As the Administrator for Federal Procurement Policy, I chair the FAR Council, which is comprised of DoD, GSA, and the National Aeronautics and Space Administration (NASA). The FAR Council is responsible for developing and issuing the Federal Acquisition Regulation (FAR) through the management of FAR cases. These cases reflect substantial input from civilian and defense agencies, and are subject to public review and comment so that industry, including small businesses, and other key stakeholders have a chance to provide feedback on the impact of proposed, interim, and final regulations. The FAR Council recently opened FAR Case 2013-020, Information on Corporate Contractor Performance and Integrity through FAPIIS, to consider the best ways (including policy and systems changes) to implement section 852.

Sec. 853, Inclusion of Data on Contractor Performance in Past Performance Databases for Executive Agency Source Selection Decisions – Section 853 requires the FAR Council to develop a strategy for strengthening the collection and use of past performance information. Improving the quality and quantity of contractor past performance assessments is one of my top priorities, and in March of this year, OFPP issued a memorandum, *Improving the Collection and Use of Information About Contractor Performance and Integrity*, directing agencies to baseline the current state of their assessments and set aggressive quarterly targets to get to 100 percent compliance by 2015. The Chief Financial Officer Act agencies baselined their performance and we are reviewing their quarterly targets to be sure they are on track for full compliance by 2015.

Additionally, the FAR Council is implementing section 853 through the following regulatory actions:

- FAR Case 2012-009, Documenting Contractor Performance, implements parts of section 806 of NDAA for FY 2012 (Pub. L. 112-81), which establishes standards for timeliness and completeness of past performance evaluations, strengthens assignment of responsibility and management accountability for submitting assessments, and ensures that past performance submissions are consistent with award fee evaluations, where appropriate. This rule, which will be final when published by the FAR Council, also incorporates agency management accountability requirements from section 853 of the NDAA for FY 2013.
- FAR Case 2012-028, Contractor Comment Period--Past Performance Evaluations, implements section 806(c) of Pub. L. 112-81 (NDAA for FY 2012) and section 853 of NDAA for FY 2013, allowing contractors 14 calendar days to rebut past performance evaluations and requiring that past performance evaluations be included in the database within 14 days. We expect this to be published as a proposed rule and to hold a public meeting to discuss with industry and other stakeholders.

We think that these rules, coupled with OFPP's management initiatives discussed above, will improve the collection and use of past performance assessments. Additionally, we will review agency performance on a regular basis to monitor their progress – such as through OFPP's Acquisition Status (AcqStat) meetings – and determine if additional steps need to be taken.

Sec. 862, Uniform Contract Writing System Requirements – Section 862 requires OFPP to develop standards for agency contract writing systems. Congress correctly recognized that there are numerous contract writing systems throughout – and even within – Federal agencies. Addressing this problem through the development of standards will drive better flow of information from acquisition systems to payment systems to financial management systems. To that end, OFPP is collaborating with an interagency working group to inventory all existing contract writing systems and versions, and review current functional and IT data standards to develop an effective project. This working group will develop standards that improve the flow of information from acquisition systems to payment systems and financial management systems.

To meet the requirements of Section 862, the acquisition community plans to implement uniform data standards, internal control requirements, independent verification and validation requirements, and other business rules. These improvements will allow us to better standardize the process for developing procurement requests, contracts, receipts, and invoices, and will help us to harmonize agency contract writing systems. Work on these efforts is ongoing, and OFPP and the interagency working group are focusing on several key activities:

- working collaboratively with Federal agencies to identify the contract writing systems currently in use or being deployed across the Federal government in order to better understand existing similarities, providers, differences, and identify opportunities to leverage ongoing efforts;
- reviewing current initiatives with similar goals, including those undertaken by the Government Accountability and Transparency Board (GAT Board) and Chief Acquisition Officers Council. The GAT Board recognized the need for data standards to improve transparency and accountability and outlined key actions in the March 2013 Way Forward for Calendar Year 2013, and we are working with the GAT Board to leverage this work;
- collaborating with agencies to identify key elements that will become part of any approval process for contract writing systems; and
- exploring changes in the FAR that will support uniform standards, such as those for further improving the unique identification of procurement awards and increasing use of line items in contracts.

We believe the steps described above to make contract writing systems more uniform will help our agencies and the contracting community meet these objectives.

Thank you for your continued interest in Federal acquisition. The Administration is committed to strengthening our procurement management operations while ensuring the integrity and transparency of procurement data. OMB looks forward to a continued dialogue with the Subcommittee on our shared interests to ensure taxpayer dollars are spent effectively and efficiently for the American people.

If you have any questions, please do not hesitate to contact Kristen J. Sarri, Associate Director for Legislative Affairs, at 202-395-4790.

Sincerely,



Joseph G. Jordan
Administrator for Federal Procurement Policy

Identical letter sent to:

The Honorable Ron Johnson
Ranking Member
Subcommittee on Financial and Contracting Oversight

CLASSIFICATION: UNCLASSIFIED
Page 1 of 3

From: Johnson, Carol R
Sent: 3/28/2012 3:12:26 AM
To: svcSMARTBTSP05
Subject: REQUEST FOR DS TDY AND FTE SUPPORT
Attachments: Metadata.dat

UNCLASSIFIED
SBU



MRN: 12 TRIPOLI 130
Date/DTG: Mar 28, 2012 / 280648Z MAR 12
From: AMEMBASSY TRIPOLI
Action: WASHDC, SECSTATEROUTINE
E.O.: 13526
TAGS: ASEC, AMGT, LY
Captions: SENSITIVE
Reference: 12 TRIPOLI 64
Pass Line: STATE FOR DS/PI/NEA AND NEA/EX
Correction Reason: CORRECTED COPY: Refel added.
Subject: REQUEST FOR DS TDY AND FTE SUPPORT

1. (SBU) SUMMARY AND ACTION REQUEST: As Tripoli seeks to transition from emergency to normalized security operations, post and the RSO face a considerable workload in a constantly evolving environment. Accomplishment of RSO's core objectives -- essential support for movement security, including continuing high volume of senior-level visits; rebuilding and expanding post's PSA Local Guard Force (LGF); managing major physical security projects; creating a locally engaged bodyguard force; and establishing traditional RSO programs -- requires continued TDY support from the Department, as well as an increase in the number of our permanently assigned RSO staff. In order to transition successfully from the current MSD and SST-based security model to one that incorporates more locally based and non-emergency assets, post requests: 12 TDY DS agents for 45-60 day rotations in Tripoli (to replace our two departing MSD teams); 5 TDY DS agents for 45-60 day rotations in Benghazi; continued deployment of one MSD team through completion of training of our second LES bodyguard team (o/a July 1); one TDY ARSO from April 1 till July 1; and one WAE TDY'er to assist with LGF program development and emergency planning. In addition, post requests an increase in full-time staffing for RSO Tripoli to include: one RSO, one Deputy RSO, and four ARSOs. Post is extremely grateful for the extraordinary support provided by DS as we transition to normalized security operations. End summary and action request.

2. (SBU) As noted in our EAC reports and regular DS spot reports, the security environment in Tripoli remains uncertain and unstable. Although there has been a marked decrease in the number of militia checkpoints around Tripoli, the Transitional National Council (TNC) has not yet succeeded in demobilizing the multiple militias or bringing them into a centralized command and control structure. This uncertain environment is likely to continue through the entire transition cycle, which as outlined in the TNC's constitutional charter, is

CLASSIFICATION: UNCLASSIFIED
Page 1 of 3

CLASSIFICATION: UNCLASSIFIED
Page 2 of 3

expected to last at least one year beyond the June 2012 election for the constitutional assembly. In REF A, Post provided a detailed description of the evolving security environment at Post, VIP visit demands, physical security projects underway, and an update of LGF and LES close protection recruitment, staffing, and training efforts.

3. (SBU) As recommended by the Department, post is developing plans to transition our security staffing from an MSD and SST-based model to one that incorporates more locally based and non-emergency assets. Post requests the following support:

-TDY DS AGENTS: Post requests twelve (12) TDY DS agents, with a preference for high-threat trained personnel, for 45-60 day rotations, to provide movement and static security in lieu of two MSD teams. Since Tripoli reopened in September 2011, post has relied on three teams of MSD agents (18 DS agents) to provide emergency support in support of our operations. One of the three MSD teams departed post in March and was not replaced. While post has reduced its movement security profile in light of a general improvement in the security environment, Post requires a DS escort for movement of personnel who have not received FACT, SNOE, or similar post provided training. Currently, MSD and SST personnel man two Quick Reaction Force (QRF) elements, deployed as a response force, for all day time movements in Tripoli. Movements after 1800 hrs generally require QRF support and a DS escort in the vehicle. MSD and SST personnel also provide personnel to support COM and DCM movement teams. Post also is required to deploy MSD and SST personnel to support VIP visits, which occur at rate of 3-5 per month. Finally, MSD and SST assets provide static armed security at the temporary Chancery and Interim Residential compounds. As Post's LES close protection assets and program expands, we would expect the number of TDY DS agents to contract accordingly, with a planned complete reduction of TDY DS agents in Tripoli within the next 3-5 months. However, complete elimination of our USDH TDY security presence is contingent upon post receiving host government permission to arm our LES bodyguard force.

-DS AGENT SUPPORT IN BENGHAZI: Post requests continued support for 5 TDY DS agents in Benghazi on 45-60 day rotations. This number is required to ensure that we have an appropriate USDH presence to protect our COMSEC; support the two long-term USDH TDY'ers; and support an increasing number of program/assistance TDY's from both Tripoli and Washington. The number of TDY'ers in Benghazi is expected to increase in the run-up to the June elections. Embassy Tripoli is in the process of recruiting four LES drivers and an RSO LES SPSS, which will support operations in Benghazi. Post also plans to deploy a TDY RSO from Tripoli once expanded permanent staffing is established and stabilized. Once these positions are filled, Post anticipates requiring fewer TDY DS agents to support Benghazi. Although an LGF contractor has begun operations in Benghazi, initial discussions regarding contractor-provided armed close protection / movement support does not appear viable based on complications regarding GOL firearms permits. Currently, the LGF contractor is able to obtain only short-term (48-72 hr) firearms permits for specific VIP visits.

-MSD TEAMS: Post requests the continued deployment of one MSD team of six agents to provide training team assistance for a surge of newly hired LGF and LES movement security. We would expect the first group of 12 LES movement security team members to complete an 8-week MSD led training course on April 19 and a second group of 12 team members to complete the same training on June 14. Approximately 50 newly hired LGF will complete MSD assisted two-week basic training courses by mid-April. Post anticipates the departure of the MSD training team upon completion of the second LES movement security team training course and deployment, on/about July 1, 2012. Post requests that the second MSD team currently deployed until mid-May be replaced with the aforementioned TDY non-MSD DS agents.

-ARSO SUPPORT: Post expects its two permanent ARSOs to arrive in mid-April and mid-June respectively. Post

CLASSIFICATION: UNCLASSIFIED
Page 2 of 3

CLASSIFICATION: UNCLASSIFIED
Page 3 of 3

requests one TDY DS AGENT with prior ARSO experience to act in a TDY ARSO capacity for periods of 45-60 days beginning on April 1 until July 1.

-ADDITIONAL SUPPORT: Post requests one WAE TDYer to assist with LGF program development and assist with emergency planning, to include development of Post's Emergency Action Plan (EAP).

4. (SBU) FULL TIME STAFFING: Given the vast increase in the number of programs and personnel that RSO is required to manage as well as the fluid security environment in which those programs must be built, Post supports the proposed full time staffing for RSO Tripoli of 1 RSO, 1 Deputy RSO, and 4 Assistant RSOs. As Post expects continued operations in Benghazi through CY 2012 and Tripoli's tours of duty to remain at one year, the proposed permanent staffing would provide sufficient support during periods of RR/RRBs while also stabilizing support for operations in Benghazi.

5. (U) Embassy Tripoli is extremely grateful for the extraordinary support provided by DS as we transition to normalized security operations. Point of contact for this request is Eric A. Nordstrom, RSO Tripoli, NordstromEA@state.gov, 24hr VOIP/TOC – (240) 581-5489.

Signature:	CRETZ
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Page 3 of 3

CLASSIFICATION: UNCLASSIFIED
Page 1 of 3

From: Nordstrom, Eric A
Sent: 7/9/2012 9:16:05 AM
To: svcSMARTBTSP05
Subject: TRIPOLI - Request for extension of TDY security personnel
Attachments: Metadata.dat

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MRN: 12 TRIPOLI 690
Date/DTG: Jul 09, 2012 / 091316Z JUL 12
From: AMEMBASSY TRIPOLI
Action: WASHDC, SECSTATE/ROUTINE
E.O.: 13526
TAGS: ASEC, AMGT, MARR, LY
Captions: SENSITIVE
Reference: A) 12 TRIPOLI 682 - INTERIOR MINISTER DISCUSSES BILATERAL RELATIONSHIP AND SECURITY CONCERNS
B) 12 TRIPOLI 622 ? LIBYA'S FRAGILE SECURITY DETERIORATES
C) 12 TRIPOLI 596 ? TRIPOLI - EAC - 06/20/2012
D) 12 TRIPOLI 37 ? TRIPOLI EAC
E) 12 TRIPOLI 612 ? TRIPOLI EAC
F) 12 TRIPOLI 39 ? TRIPOLI EAC
G) 12 TRIPOLI 604 - MISSION LIBYA- UPDATED TRIPWIRES
Subject: TRIPOLI - Request for extension of TDY security personnel

1. (SBU) Summary and Action Request: Embassy Tripoli requests continued TDY security support for an additional 60-days, through mid-September 2012. Post assesses a minimum of 13 TDY U.S. security personnel, either DS MSD, domestically assigned HT trained DS agents, DS SPS, or DOD/SST personnel or a combination of these personnel, are required to maintain current transportation security and incident response capability while we transition to a locally based security support structure. Post also requests continued TDY support of 2 DS agents until the RSO reaches a planned full-time staffing level of five (5) agents. These TDY security needs do not include MSD security personnel involved exclusively in training the local guard force (LGF) and LES close protection team/bodyguards. Post understands and appreciates ongoing efforts by DS to identify and deploy TDY resources to meet our security needs during the next 60-90 days. End summary and action request.

2. (SBU) Conditions in Libya have not met prior benchmarks established by Post, the Department, and AFRICOM, for a complete drawdown of TDY security personnel. Overall security conditions continue to be unpredictable, with large numbers of armed groups and individuals not under control of the central government, and frequent clashes in Tripoli and other major population centers. National parliamentary elections have been delayed from 6/19 to 7/7, with post expecting an increased likelihood of election related political violence during and after the election period.

3. (SBU) While post has made a number of procedural security enhancement and physical security upgrades, our

CLASSIFICATION: UNCLASSIFIED
Page 1 of 3

CLASSIFICATION: UNCLASSIFIED
Page 2 of 3

efforts to normalize security operations have been hindered by the lack of host nation security support, either static or response, an increase in violence against foreign targets, and GoL delays in issuing firearms permits for our LES close protection/bodyguard unit. Despite field expedient physical security upgrades to improve both the temporary Embassy and Villas compound, neither compound meets OSPB standards. Recognizing the growing challenges to Libya's fragile security environment, the Department increased Post's danger pay allowance from 25 percent to 30 percent on July 1st.

4. (SBU) Under current arrangements, Post's thirty-four (34) U.S. security personnel (16 SST, 11 MSD, 1 WAE TDY, 1 RSO, 2 ARSOs, and 3 TDY ARSOs) will draw down to twenty-seven (27) security personnel on 7/13. On 08/05, post will reduce U.S. security personnel to 4 MSD trainers, 1 RSO, 2 ARSOs, and 3 TDY ARSOs, with a further reduction to seven U.S. security personnel on 08/13, which includes four (4) MSD trainers not generally supporting transportation security, VIP visits, or RSO programs.

5. (SBU) As the Regional Security Office seeks to transition from emergency to normalized security operations, the continued presence of TDY security personnel is essential to support our daily movement and the continuing high volume of senior-level visits, provide static security in the absence of an appropriate host nation security presence, and assist our Mobile Security Detachment (MSD) colleagues in the training of our newly hired LGF members and locally engaged bodyguard force. SST's deployment has been critical to our ability to navigate the transition to a more locally-based security team while continuing to support a high-volume of VIP visits and expand our U.S. Direct Hire (USDH) staff (reflets A-G). Post anticipates supporting operations in Benghazi with at least one permanently assigned RSO employee from Tripoli, however, would request continued TDY support to fill a minimum of 3 security positions in Benghazi.

6. (SBU) With the receipt of firearms permits for 11-members of Post's LES close protection team, RSO anticipates limited deployment of team members to support Ambassador, DCM, and QRF details. However, this deployment will continue to require U.S. security personnel support and leadership until the close protection team (CPT) is fully staffed with 24 members. A second group of 5 members of LES CPT members complete MSD led initial training on 7/18 and could be fully deployed once firearms permits have been received from the Ministry of Interior. Permits for the first 11 LES close protection team members took more than 2 months and required Ambassadorial intervention with the Minister of Interior. While post anticipates a quicker response with this next round of permits, recruitment efforts of qualified applicants for the remaining CPT positions remains slow. As of 7/5, Post has identified only 2 of the remaining 8 candidates for the 3rd and final MSD led training course for new LES CPT.

7. (SBU) RSO and Post continue to engage host nation and is in the process of constructing and refurbishing climate controlled guard booths at the temporary Embassy and Residential Villas compound as part of a plan to entice Ministry of Interior security support. Additionally, RSO has had initial discussions with Ministry of Interior police leadership, who expressed interest in signing a MOU for stipends to support a sustained presence of MoI officers at the aforementioned properties. However, despite assurances of support from throughout the MoI, to include from the Minister directly, the reality is that the GoL remains extremely limited in its ability to sustain a security support presence at USG compounds (REFTEL B).

8. (SBU) RSO and Post will continue to examine ways to augment the internal defense and static security profile at USG compounds in Libya, to include consideration of a partial arming of supervisory personnel in the LGF. Post anticipates that full implementation of armed supervisor LGF members could take up to 60 days for selection, training, equipping, policy approvals and deployment. Given the GoL's traditional sensitivities regarding armed security personnel, Post does not recommend deployment of either an armed LGF or CPT element without notification to and licensing from the GoL.

CLASSIFICATION: UNCLASSIFIED
Page 2 of 3

CLASSIFICATION: UNCLASSIFIED
Page 3 of 3

9. (SBU) Post appreciates Department's support and guidance as we work to build up local capacity to address security requirements.

Signature: STEVENS
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Page 3 of 3

SIGAR

Special Inspector General for
Afghanistan Reconstruction

SIGAR Audit 13-6

**CONTRACTING WITH THE ENEMY: DOD
Has Limited Assurance that Contractors
with Links to Enemy Groups Are Identified
and their Contracts Terminated**

APRIL
2013



SIGAR Audit 13-6/DOD Compliance with Section 841 of the FY2012 NDAA

AFCEC officials also expressed concerns about the lack of guidance for absorbing the financial costs of exercising Section 841 authorities. For example, with the termination of the contract with the Section 841 designated subcontractor, AFCEC incurred further expenses as its prime contractor sought and employed a new company to complete the work once performed by the Section 841 designee. Without established guidance, HCAs and prime contractors are at risk of facing legal challenges from Section 841 designees and may have to absorb financial costs associated with implementing Section 841 authorities.

In addition, DOD does not centrally track responses to the Section 841 notification letters and actions taken to terminate, restrict, or void contracts. Under Section 841, the Secretary of Defense is required to report annually by March 1 of 2013, 2014, and 2015, to various congressional committees on the use of the section's authorities during the preceding year. OSD AT&L, specifically the Office of Defense Procurement and Acquisition Policy, is responsible for submitting the mandated report and is obtaining this data directly from the various services and other contracting agencies. CENTCOM is also collecting Section 841 data, resulting in a duplication of effort. OSD and CENTCOM officials informed us that they plan to compare the data collected for consistency and accuracy. Without a centralized tracking mechanism, DOD may continue to duplicate data collection efforts.

SECTION 841 LEGISLATION NEEDS TO BE STRENGTHENED

In addition to the weaknesses identified in DOD's processes, we noted several limitations in Section 841 of the NDAA. First, not all DOD contracts within Afghanistan are subject to the provisions of Section 841 because the section only applies to contracts valued in excess of \$100,000. However, a large number of awarded contracts are below the \$100,000 threshold. For example, 7,730 of 9,733 (or approximately 80 percent) contracts C-JTSCC awarded in fiscal year 2012 were contracts valued under \$100,000. Furthermore, 82 percent of contracts awarded to Afghan entities fell below this threshold.

Second, because Section 841 provisions expire on December 31, 2014, the future status of contracts and Section 841 designees is unclear. Specifically, the legislation does not address whether Section 841 provisions will continue to apply to contracts entered into prior to but active after the expiration date. If Section 841 provisions are not reauthorized, HCAs' authority to terminate, restrict, or void active contracts with entities and individuals found to be in violation of Section 841 may be limited. In addition, if Section 841 designees are not prohibited from contracting with DOD under alternative measures after 2014, it is possible that DOD's contracting agencies may enter into contracts with these persons or entities in the future. Finally, DOD officials expressed concern that information and intelligence gathered through the Section 841 process may be lost if the provisions expire.

Third, as enacted, Section 841 applies only to DOD and its various agencies and organizations. Thus, agencies other than DOD—most notably the Department of State and U.S. Agency for International Development—are not subject to its provisions.²³ SIGAR issued an alert letter on October 17, 2012 notifying the Department of State and the U.S. Agency for International Development of the first two groups of individuals and entities identified as Section 841 designees. This alert letter acknowledged that, while Section 841 only affects DOD contracts, both the Department of State and the U.S. Agency for International Development use many of the same contractors as DOD, and consequently there could be a present or future risk that the Department of State and the U.S. Agency for International Development could have active prime or subcontracts with Section 841 designees. We are addressing Department of State and U.S. Agency for International Development efforts to prevent contracting with the enemy in a separate review.

²³ As of the third notification letter dated November 16, 2012, the Department of State and U.S. Agency for International Development are included in CENTCOM's distribution list.

PROBLEMS IN USAID CONTRACTING
According to the Commission on Wartime Contracting

“Afghan subcontractors on a USAID community-development program in Kunar Province were paying up to 20 percent of their total subcontract value to insurgents for “protection.”

The USAID IG estimated that over \$5 million of program funding was at risk of falling into insurgents’ hands.”

“Because they directly strengthen the insurgency, diverted funds pose far more danger than other kinds of waste and have a disproportionately adverse impact on the U.S. effort.”

“USAID staff learned of serious bank problems from reading about them in the *Washington Post*.” USAID was providing support to the Kabul Central bank, their contractor on the bank never informed them of the bank’s collapse. They later terminated the contract with Deloitte, but not for default.



SIGAR

Office of the Special Inspector General
for Afghanistan ReconstructionJohn F. Sopko
Inspector General

May 16, 2013

The Honorable Kelly Ayotte
United States Senate
144 Russell Senate Office Building
Washington, DC 20510

The Honorable Richard Blumenthal
United States Senate
702 Hart Senate Office Building
Washington, DC 20510

Dear Senators Ayotte and Blumenthal,

We understand that the “Never Contract with the Enemy Act,” was recently introduced in the U.S. Senate and are pleased to note that your legislation addresses many of the concerns and recommendations raised by SIGAR in Audit 13-6, *Contracting with the Enemy: DOD Has Limited Assurance that Contractors with Links to Enemy Groups Are Identified and their Contracts Terminated*. If passed, your bill will strengthen existing law to ensure that U.S. contracting dollars do not go to individuals and groups opposing U.S. and Coalition forces.

Section 841 of the FY 2012 National Defense Authorization Act is a valuable tool used by U.S. Central Command to deny the enemy access to U.S. government contracts. However, as SIGAR and others have highlighted, weaknesses in the Section 841 process prevents the Department of Defense from having reasonable assurance that it is identifying all contracts held by persons and entities determined to be actively supporting the insurgency or otherwise opposing U.S. and coalition forces in Afghanistan.

Time is of the essence in Afghanistan, and the U.S. government must quickly address this problem to make certain U.S. contracting dollars are not provided to bad actors. Your leadership on this issue is important, as is your commitment to protecting U.S. and Coalition personnel from the potential harm caused by poor contract oversight.

I appreciate your interest in SIGAR’s oversight work and we stand ready to further assist you and others to improve the Section 841 process.

Sincerely,

John F. Sopko
Special Inspector General
for Afghanistan Reconstruction

FINAL REPORT TO CONGRESS | AUGUST 2011

Transforming Wartime Contracting

Controlling costs, reducing risks



COMMISSION ON WARTIME CONTRACTING
IN IRAQ AND AFGHANISTAN

WWW.WARTIMECONTRACTING.GOV

CHAPTER 3

the insurgents or warlords who control the roads their convoys must use.⁶ Almost 6,000 Afghan truck movements a month are funded under the program. Diversion on this scale did not occur in Iraq, where the U.S. military provided most of the escorts for similar convoys.

Many contracts other than transportation provide opportunities for diversion:

- Afghan subcontractors on a USAID community-development program in Kunar Province were paying up to 20 percent of their total subcontract value to insurgents for "protection." The USAID IG estimated that over \$5 million of program funding was at risk of falling into insurgents' hands.⁷
- A congressional staff report cited Afghan Taliban demands for pay-offs from businesses and households for electricity generated by USAID-funded projects. This occurs in Taliban-controlled areas like Helmand Province.⁸

Because they directly strengthen the insurgency, diverted funds pose far more danger than other kinds of waste and have a disproportionately adverse impact on the U.S. effort.

Extortion of funds from U.S. construction projects and transportation contracts is the insurgents' second-largest funding source.

Unanticipated security costs

Agencies continue to take on some projects without sufficient regard for the costs of security. Numerous audits estimate that unanticipated security costs increased expenses by 25 percent.⁹

Failure to anticipate, estimate, and factor spending on security costs into project and program decisions has led to massive waste as projects are shut down or abandoned.

Numerous audits estimate that unanticipated security costs increased project expenses by 25 percent.

6. U.S. House Committee on Oversight and Government Reform, Subcommittee on National Security and Foreign Affairs, Majority Staff Report, "Warlord, Inc.: Extortion and Corruption Along the U.S. Supply Chain in Afghanistan," June 2010, 29.

7. USAID IG Review Report 5-306-10-002-5, "Review of Security Costs Charged to USAID Projects in Afghanistan," September 29, 2010, 6.

8. U.S. Senate Committee on Foreign Relations, Majority Staff Report, "Evaluating U.S. Foreign Assistance to Afghanistan," June 8, 2011, 10.

9. GAO Report GAO-07-308, "Rebuilding Iraq: Status of Defense's Reconstruction Program," December 15, 2006, 8; GAO Report GAO-05-737, "Rebuilding Iraq: Actions Needed to Improve Use of Private Security Providers," July 2005, 33; SIGAR Audit 10-4, "Afghanistan Energy Supply Has Increased but an Updated Master Plan is Needed and Delays and Sustainability Concerns Remain," January 15, 2010, 11; World Bank Report 34582-AF, "Afghanistan: Managing Public Finances for Development," 2005, 17, 29.

A "Mutiny" in Kabul: Guards Allege Security Problems Have Put Em... file:///R:/2013 Hearings/2013-07-16 Wartime Contracting Implementa...

POGO PROJECT ON GOVERNMENT OVERSIGHT

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A "Mutiny" in Kabul: Guards Allege Security Problems Have Put Embassy at Risk

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Topics: Contract Oversight, National Security

January 17, 2013 | Adam Zagoria

Related Content: Congressional Oversight, DOD Oversight, Embassy Guards, Government Privatization, Inherently Governmental Functions, Private Security Contractors



Private guards responsible for protecting what may be the most at-risk U.S. diplomatic mission in the world -- the embassy in Kabul, Afghanistan -- say security weaknesses have left it dangerously vulnerable to attack.

In interviews and written communications with the Project On Government Oversight (POGO), current and former guards said a variety of shortcomings, from inadequate weapons training to an overextended guard force, have compromised security there -- security provided under a half-a-billion-dollar contract with Aegis Defense Services, the U.S. subsidiary of a British firm. "[I]f we ever got seriously hit [by terrorists], there is no doubt in my mind the guard force here would not be able to handle it, and mass casualties and mayhem would ensue," a guard serving at the embassy wrote in a late November message to POGO.

In July, dissatisfaction boiled over when more than 40 members of the embassy's Emergency Response Team signed a petition sounding an alarm about embassy security, people familiar with the document said. The petition, submitted to the State Department and Aegis, expressed a "vote of no confidence" in three of the guard force leaders, accusing them of "tactical incompetence" and "a dangerous lack of understanding of the operational environment." Two guards say they were quickly fired after organizing the petition, in what they called "retaliation."

A State Department document obtained by POGO describes a "mutiny" among guards who defend the Kabul embassy -- an apparent reference to the petition, though the document does not explicitly mention it. Dated July 19, 2012, and labeled "SENSITIVE BUT UNCLASSIFIED," the document says that the mutiny was "baseless" but that it "undermined the chain of command" and "put the security of the Embassy at risk."

The allegations made by the Kabul guards in their interviews with POGO are all the more disturbing in the wake of congressional and public outcry over the lax security that may have contributed to the deadly attack on Ambassador Christopher Stevens and three others in Benghazi, Libya, last September. The official *post mortem* released by the State Department's independent commission last month painted the Benghazi facility as a casualty of bureaucratic neglect, and the assistant secretary for diplomatic security *resigned*. But the situation described by guards in Kabul suggests that diplomatic security problems go far beyond a makeshift, overcooked outpost in eastern Libya.

Following the Benghazi attack, the State Department dispatched teams to assess security at a number of diplomatic posts -- but not to the Kabul embassy because, according to the department, security was already heightened there.

The guards' charges are simply the latest chapter in the ongoing saga of the Kabul embassy.

In 2009, Aegis's predecessor as the security contractor there, ArmorGroup North America (AGNA), became embroiled in controversy after POGO documented security shortcomings similar to those alleged by Aegis guards -- from a breakdown in the chain of command to long hours, low morale, and alleged retaliatory firings. The organization's investigation also brought to light lurid photographs of guards engaged in nude, apparently drunken revelry and sexual hazing.

Testifying before a federal commission in September 2009, an executive of AGNA's parent company said there were "no excuses" for the guards' "misbehavior" and he was "not here to defend the indefensible." Though AGNA "suffered from many contractual compliance issues," Wackenhut Services vice president Samuel Brinkley said in written testimony, "the security of the Embassy was never at risk."

The State Department chose a replacement for AGNA in 2010 only to conclude months later that that company would be unprepared to begin work on schedule. Aegis was awarded the task in July 2011 and finally took over Kabul embassy protection in June 2012. But, according to the Aegis guards, it rapidly became clear that the security situation was untenable.

Aegis declined to answer questions for this report. "Per our contractual obligations, all questions and inquiries regarding this contract should be directed to the Department of State's Public Affairs Office," company spokesman Joshua C. Huminski wrote.

In a written response to questions, the State Department said that a regional security officer has assessed operations at the embassy and "determined that security policies and procedures are sound."

The department said it takes seriously the concerns of Aegis personnel. After receiving the petition, the embassy conducted roundtable discussions "with those who wanted to voice their concerns." According to the department, it "did not request the removal of any contract personnel for voicing their concerns or signing the petition." Some individuals, it said, "have been removed for other reasons."

Private Force, Public Duty

An atmosphere of danger pervades everyday life for U.S. personnel in Kabul. *Almost a year to the day before the Benghazi attack, insurgents fired rocket-propelled grenades at the U.S. compound in Kabul.* And on Nov. 21 a Taliban suicide bomber claimed three victims only blocks from the American embassy. A former senior U.S. official who served at the embassy said that security is designed to defend the facility "against direct assaults, one or two or more.... But a...breach in the [embassy] wall followed by a group of suicide bombers, that would be a close call...that would be a bad day."

The sprawling, heavily fortified facility reflects the threat -- barbed wire, bomb-sniffing dogs, machine gun emplacements, perimeter walls, and towers. The lives of about 1,500 embassy employees -- American and local staff -- are on the line.

As in American embassies around the world, there is a small contingent of U.S. Marines, but their main mission is to protect the chancery and destroy classified materials in the event of a breach. The defense of the embassy falls principally to American and foreign contract guards -- including approximately 100 members of the Emergency Response Team, according to guards POGO interviewed -- overseen by the State Department's Bureau of Diplomatic Security.

In Kabul, the embassy guard force is run by Aegis Defense Services under a federal contract that the State Department said has a "current value" of \$497 million. (The full

Post-Hearing Questions for the Record
Submitted to the Richard "Dick" Ginman
From Senator Claire McCaskill

"Implementation of Wartime Contracting Reforms"
July 16, 2013

1. Question. The 2013 National Defense Authorization Act (NDAA) wartime contracting reforms instituted significant organizational, procedural and reporting changes for the Department of Defense (DoD), including mandating risk assessments. An overriding purpose of these reforms was to prevent the DoD from entering contracts that would have harmed American interests or wasted American tax dollars. What specific DoD contract, project or program was successfully stopped because NDAA wartime contracting reforms?

Answer: There are multiple Military Construction projects in Afghanistan that the Department has cancelled or de-scoped, following the wartime contracting reforms introduced by Senator McCaskill in 2011. Since November 2011, DoD has conducted four rounds of project reviews in order to identify unneeded projects, resulting in the cancellation or de-scoping of 123 projects. A fifth round of reviews is currently ongoing. These cancelled and de-scoped projects spanned 17 different military bases and a wide range of efforts, including waste management, dining facilities, guard towers, housing, hangars, fencing, paved roads, and cargo handling. The attached list of cancelled and de-scoped military construction projects in Afghanistan provides additional details, including the Component, project number, project title, military base, program, and total program amount (PA), in dollars (representing the amount Congress allocated for the program).

Attachment:
US Forces – Afghanistan MilCon Project Cancellation/Descope List (3 pages)

2. Question. NDAA Section 844 demands increased information and accuracy regarding contracts and contractor personnel in contingency operations. In order to determine the progress of DoD's data collection and reporting, please provide the following information for July 16, 2013 in addition to the information already provided to the Subcommittee on July 17, 2013 (or indicate that DoD does not yet have the capability of either collecting or generating the information). What is the total number of contracts that DoD has entered into in Afghanistan? What is the value of those contracts? What is the total number of DoD contractor casualties in Afghanistan?

Answer. As of August 1, 2013, the Department has reported in the Federal Procurement Data System - Next Generation the following contract actions and obligations where the place of performance was identified as Afghanistan:

Country	FY13 (Oct 2012 – July 2013)	FY12	FY11	Cumulative (FY03 – July 2013)
---------	-----------------------------	------	------	-------------------------------

	\$	*Actions	\$	*Actions	\$	*Actions	\$	*Actions
Afghanistan	\$9.9B	259.3K	\$17.6B	1,290K	\$16.4B	35.2K	\$77.1B	1.68M

*Actions include agreements, contracts, task/delivery orders under contracts, and modifications

Quantifying the precise number of DoD contractor casualties in Afghanistan is challenging. The Department is not yet able to rely upon any one system to provide complete casualty data. Previously, the Department used the Department of Labor's Office of Workers' Compensation Programs (OWCP) Defense Base Act (DBA) Summary Report to report numbers of killed and wounded contractors. Because DBA is a workers' compensation program, the Department of Labor's statistics provide information on the total number of DBA cases created from all employers. Included are not only casualty cases, but also those resulting from occupational injuries. In FY12, the Summary Report identified 247 individuals killed in Afghanistan and 2,406 wounded.

The Defense Casualty Information Processing System (DCIPS) provides the most accurate information on U.S. citizen casualties. DCIPS records casualties of U.S. civilians who are contract employees working in support of the Armed Forces of the United States or other U.S. Government agencies in a deployed theater of operations. From October 1, 2012 to July 16, 2013, DCIPS reflects six U.S. contractor deaths in hostile incidents; two non-hostile deaths; and, one non-hostile injury.

As the designated common database for contracts and contractors in Iraq and Afghanistan, the Synchronized Predeployment and Operational Tracker (SPOT), has been modified to enable contractors to report both deaths and injuries. To date however, contractors are not consistently reporting casualty information. From October 1, 2012 to July 16, 2013, SPOT reflects only one death caused by a non-hostile action and four injuries. With complete reporting, SPOT could capture all US Government contractor casualties to include U.S., Third Country National, and Host Nation contractors. DoD is considering all options to improve this reporting capability.

3. Question. NDAA Section 862 requires DoD, among others, to establish uniform data standards for processing contracts, establishing systems that conform with the standards, and require the use of the systems. It also requires DoD to submit a report on implementation of the standards and systems by July 2, 2013. Please provide this report as soon as it is available.

Answer. Pursuant to section 862 of the National Defense Authorization Act for FY 2013, the Department's report to congress was signed on July 30, 2013 and subsequently transmitted to the appropriate congressional committees. A copy of the report is attached.

4. Question. This month, the Special Inspector General for Afghanistan Reconstruction reported that the military spent \$34 million on a headquarters facility in Afghanistan that commanders stated—before construction even began—that they did not want. Who was responsible for approving a \$34 million contract to build a headquarters at Camp Leatherneck that field commanders stated was unnecessary? What additional information have you learned from the Army's 15-6 investigation regarding the same? Will you provide the 15-6 investigation

when it is completed?

Answer. On 23 June 2013, International Security Assistance Force/United States Forces - Afghanistan directed an Army Regulation (AR) 15-6 investigation to determine the facts and circumstances that led to construction of the Command and Control facility in Regional Command-Southwest. The AR 15-6 investigation is not yet final, with the report presentation to U.S. Central Command pending. At this stage, the AR 15-6 fact gathering indicates that the total cost of this facility is \$25 million, not \$34 million. Until CENTCOM releases the final report, the Department is unable to provide further information.

5. Question. The DoD Inspector General (IG) issued a report that discussed this headquarters facility on March 8, 2013 (Report No. DODIG-2013-052). According to the report, DoD IG investigators visited this facility on the ground. While this report discussed personnel hazards at the facility (such as insufficient emergency exits) it did never discussed or questioned whether the facility was necessary. Is the Army's 15-6 investigation examining whether the DoD IG had an opportunity to identify that the facility was unnecessary, and if it did have an opportunity, why the DoD IG did not report it? If the 15-6 is not making such an examination, why isn't it?

Answer. The AR 15-6 investigation is not yet final, with the report presentation to U.S. Central Command pending. At this stage, the AR 15-6 fact gathering indicates that the DoDIG inquiry focused on safety issues in several facilities, including the Command and Control facility in Regional Command-Southwest. The DoDIG audit focused on the quality assurance of construction of the Command and Control facility in Regional Command-Southwest because at the time of the audit site visits in 2012, contracting and construction officials were planning to use the building for Marine Corps personnel upon completion of construction. Until CENTCOM releases the final report, the Department is unable to provide further information.

6. Question. DoD has reported that under NDAA Section 849, Chief Acquisition Officers assumed responsibility for ensuring DoD compliance with contingency operation contract policies. How can DoD ensure that the Chief Acquisition Officer is ensuring compliance when a project like the Camp Leatherneck headquarters facility is approved?

Answer. Section 849 of the National Defense Authorization Act for Fiscal Year 2013 amended U.S.C. 1702 to expand responsibilities of the Chief Acquisition Officers (CAOs) of Federal Agencies to include oversight of contracts and contracting activities for overseas contingency operations (OCO). While DoD is expressly excluded from the requirements to have the CAO under 41 USC 1702(a), DoD supports the notion of having a CAO be responsible for OCO contracting issues. In the Department, the USD(AT&L) is responsible for oversight of contracting for overseas contingency operations. Successfully overseeing contingency contracting entails the resources and expertise of the affected community as a whole. This is a team effort, with many organizations bringing their own unique subject matter expertise to monitor jointly planning, execution, and oversight functions. Among others, these include: USD(AT&L), USD(Policy), USD(Comptroller), USD(Personnel and Readiness), Joint Staff, Defense Contracting Management Agency, Defense Contracting Auditing Agency, Defense

Logistics Agency, and Major Commands.

The International Security Assistance Force/United States Forces - Afghanistan directed an Army Regulation (AR) 15-6 investigation to determine the facts and circumstances that led to construction of the Command and Control facility in Regional Command-Southwest. The investigation is not yet final and the report is pending presentation to U.S. Central Command. USD(AT&L) will also receive a debriefing. Once the facts and circumstances are determined, USD(AT&L) will engage stakeholders across the acquisition system to ensure this specific instance is examined and assessed for any systemic implications.

US Forces - Afghanistan MilCon Project Cancellation/Descope List

ROUND 1 MilCon Review						Nov-11
Component	Project Number	Project Title	Base	Year/Program	Total PA (\$000s)	
ARCENT	67346	C-IED Road Qalat to Shinkay	Qalat	07 MCA Suppl	57,000	
ARCENT	73195	Contingency Housing	Dwyer	09 OCO	3,800	
ARCENT	73080	Avn Hangar/Maint Facilities	Sharana	09 OCO	11,200	
ARCENT	73232	RW Ramps & Taxiway, Ph1/2	Sharana	09 OCO	39,000	
ARCENT	73367	RW Ramps & Taxiway, Ph2/2	Sharana	09 OCO	29,000	
ARCENT	73409	Fuel Distribution System	Tarin Kowt	09 OCO	8,000	
ARCENT	AUTH 09-3039	CAS Ramp NDI Pad	Bagram	10 CCA	1,951	
ARCENT	77437	Wastewater Treatment Facility	Delaram II	10 CCA	9,400	
ARCENT	71493	Perimeter Fence/Guard Towers	Bagram	10 MCA	7,000	
ARCENT	WACC 11-3220	Runway	Sharana	10 MCA 2808	35,000	
ARCENT	76906	Waste Management Area	Delaram II	10 MCA Suppl	5,600	
ARCENT	76950	Fuel Storage System	Dwyer	10 MCA Suppl	13,600	
ARCENT	75509	TF Freedom	Bagram	10 OCO	18,000	
ARCENT	74143	ECP 2	BLT	10 OCO	14,200	
ARCENT	74147	Fuel System Ph 1/2	Dwyer	10 OCO	5,800	
ARCENT	74206	RW Parking	Sharana	10 OCO	32,000	
ARCENT	74207	Replace ASP	Sharana	10 OCO	14,000	
ARCENT	74181	Waste Management Area	Tarin Kowt	10 OCO	6,800	
ARCENT	74145	Fuel System Ph 2/2	Tarin Kowt	10 OCO	11,800	
ARCENT	76964	Fire Station	Spin Boldak	10 UMMC	1,850	
ARCENT	74158	Troop Housing, Ph8	Bagram	11 OCO	29,000	
ARCENT	75199	Dining Facility	Dwyer	11 OCO	9,000	
ARCENT	75203	RW Apron	Dwyer	11 OCO	44,000	
ARCENT	75213	Wastewater Treatment Facility	Frontenac	11 OCO	4,200	
ARCENT	74129	Replace JAF ASP	Jalalabad	11 OCO	35,000	
ARCENT	75198	RW Parking & Taxiway, Ph 2	Tarin Kowt	11 OCO	24,000	
ARCENT	74062	Entry Control Point	Bagram	12 MCA	20,000	
ARCENT	74095	Replace Temp Guard Towers	Bagram	10 MCA	7,000	
ARCENT	79423	Waste Management Area	Wilson	10 MCA	5,600	
ARCENT	74126	CMU Barracks Ph 1-5	Kandahar	11 MCA 2808	29,000	
ARCENT	80249	Waste Water Treatment Plant	Wilson	11 MCA 2808	4,200	
ARCENT	77578	Dining Facility (2000PAX)	Shindand	11 MCA 2808	8,700	
ARCENT	80024	Waste Water Treatment Facility	Kandahar	12 MCA 2808	6,900	
ARCENT	77577	Dining Facility	Tarin Kowt	12 MCA 2808	6,000	
ARCENT	77586	Dining Facility	Dwyer	12 MCA 2808	14,800	
ARCENT	71609	Consolidated Motorpool	Bagram	14 MCA	12,000	
ARCENT	UMMC	MSA Bomb Build Facility	Kandahar	UMMC	1,800	
ARCENT	UMMC	3 Story Biling Ph 1	Bagram	UMMC	1,750	
ARCENT	UMMC	3 Story Biling Ph 2	Bagram	UMMC	1,750	
ARCENT	UMMC	3 Story Biling Ph 3	Bagram	UMMC	1,750	
ARCENT	UMMC	3 Story Biling Ph 4	Bagram	UMMC	1,750	
ARCENT	UMMC	3 Story Biling Ph 5	Bagram	UMMC	1,750	
ARCENT	UMMC	3 Story Biling Ph 6	Bagram	UMMC	1,750	
ARCENT	UMMC	3 Story Biling Ph 7	Bagram	UMMC	1,750	
ARCENT	UMMC	3 Story Biling Ph 8	Bagram	UMMC	1,750	
ARCENT	UMMC	South Park AAFES PX	Kandahar	UMMC	860	
ARCENT	UMMC	Boardwalk Area and Ablution Sta.	Kandahar	UMMC	1,370	

BLT = Bastione, Leatherneck, Tombstone

1 of 3

US Forces - Afghanistan MilCon Project Cancellation/Descope List

Component	Project Number	Project Title	Base	Year/Program	Total PA (\$000s)
ARCENT	UMMC	Retrograde Storage Area	Qalat	UMMC	1,300
ARCENT	UMMC	C130 Strip Repair	Qalat	UMMC	1,993
ARCENT	UMMC	Perimeter Expansion	Tarin Kowt	UMMC	1,450
ARCENT	UMMC	Guard Towers	Tarin Kowt	UMMC	1,700
ARCENT	UMMC	Sewer Collection System	Shindand	UMMC	1,250
ARCENT	UMMC	Hazmat Storage Area	Shindand	UMMC	2,000
TOTAL:					612,124

ROUND 2 MilCon Review

Component	Project Number	Project Title	Base	Year/Program	Total PA (\$000s)
ARCENT	75148	C-IED TF Compound	Bagram	11 OCO	24,000
ARCENT	77132	C-IED Lab	Bagram	11 OCO	13,800
ARCENT	77438	Entry Control Pt & Access Roads	Delaram II	11 OCO	4,400
ARCENT	73408	Fuel Distribution	Dwyer	11 OCO	8,000
ARCENT	75200	Waste Management Facility	Dwyer	11 OCO	16,000
ARCENT	74127	Contingency Hsng Ph5	Kandahar	11 OCO	20,000
ARCENT	74129	Contingency Hsng Ph6	Kandahar	11 OCO	20,000
ARCENT	77118	ASP	Shank	11 OCO	23,000
ARCENT	74462	Bulk Materials Transfer Station	Sharana	11 OCO	12,400
ARCENT	71612	AAFES Complex	Bagram	Unprogrammed	6,500
ARCENT	77570	Dining Facility	Bagram	11 2808	6,000
AFCENT	ATUH 15-0001	East Side Taxiway w/Arm/De-Arm	Bagram	Unprogrammed	40,000
AFCENT	ATUH 15-0002	Wing Consolidated Spt Complex	Bagram	Unprogrammed	8,000
AFCENT	ATUH 16-0002	Mission Support Gp Complex	Bagram	Unprogrammed	8,000
AFCENT	ATUH 17-0002	East Side Ops Gp Complex	Bagram	Unprogrammed	9,000
AFCENT	ATUH 17-0001	East Side Mx Gp Complex	Bagram	Unprogrammed	9,000
ARCENT	77585	Dining Facility	BLT	11 2808	17,500
ARCENT	80028	Washrack (50 pt)	BLT	Unprogrammed	17,000
ARCENT	UMMC	Cargo Handling	BLT	Unprogrammed	1,000
ARCENT	UMMC	Cargo Storage	BLT	Unprogrammed	1,200
ARCENT	UMMC	South Wash Station	BLT	Unprogrammed	1,800
ARCENT	79425	Waste Management Area	Dwyer	11 2808	5,600
ARCENT	80107	Washrack (24 pt)	Dwyer	Unprogrammed	14,800
ARCENT	UMMC	Air Traffic Control	Dwyer	Unprogrammed	1,000
ARCENT	UMMC	Hazmat Storage	Dwyer	Unprogrammed	2,000
TOTAL:					290,000

ROUND 3 MilCon Review

Component	Project Number	Project Title	Base	Year/Program	Total PA (\$000s)
ARCENT	74145	MedLog Warehouse	Bagram	10 OCO	4,500
ARCENT	74136	Medical C2 Facility	Bagram	10 OCO	3,500
ARCENT	BAGR 11-3009	AFOSI Facility	Bagram	11 OCO	1,670
ARCENT	71567	Eastside Utilities, Ph. 2	Bagram	11 UMMC	8,000
AFCENT	BAGR 14-0001	Construct Aircraft Hangar	Bagram	12 2808	49,000
AFCENT	BAGR 14-0002	Consolidated Comm Complex	Bagram	14 MCA	18,000
AFCENT	BAGR 16-0004	Tactical Ramp & Supp Facilities	Bagram	17 MCA	20,000

BLT = Bastione, Leatherneck, Tombstone

2 of 3

US Forces - Afghanistan MilCon Project Cancellation/Descope List

Component	Project Number	Project Title	Base	Year/Program	Total PA (\$000s)
AFCENT	BAGR 17-0001	Consolidated Ops & Mx Group HQ	Bagram	18 MCA	9,000
ARCENT	77056	Vet Clinic & Kennel	Bagram	11 OCO	2,600
ARCENT	77055	Role 3 Hospital	Bagram	11 OCO	42,000
ARCENT	69404	Joint Defense Ops Center	Bagram	11 MCA	2,794
ARCENT	74157	Contingency Housing, Ph. 7	Bagram	11 OCO	29,000
ARCENT	80451	Ammunition Supply Point (ASP)	Bagram	12 2808	62,000
ARCENT	79424	Waste Management Area	BLT	12 2808	5,500
ARCENT	75204	DFAC (2000 PAX)	BLT	11 OCO	27,000
ARCENT	75206	Waste Water Treatment Facility	BLT	11 OCO	13,000
ARCENT	77440	Paved Roads	BLT	11 OCO	9,800
ARCENT	80943	Perimeter Fence	Dwyer	12 UMMC	1,650
ARCENT	77117	SOF Helicopter Apron	Herat	11 MCA	13,200
ARCENT	77100	SOF Joint Operations Center	Kandahar	11 OCO	9,200
ARCENT	80998	Gymnasium (K-span)	Kandahar	12 UMMC	1,450
ARCENT	81081	Solar Lights & Sidewalks	Kandahar	12 UMMC	1,650
ARCENT	78039	SOF Heli Apron	Kunduz	10 UMMC	1,950
ARCENT	77446	Waste Water Treatment Plant	Shank	11 OCO	7,700
TOTAL:					344,164

ROUND 4 MilCon Review - Cancelled Projects					Mar-13
Component	Project Number	Project Title	Base	Year/Program	Total PA (\$000s)
ARCENT	80938	SOF Planning Facility	Bagram	12 UMMC	2,000
ARCENT	72242	Army Aviation HQ Facility	Bagram	11 MCA	7,000
ARCENT	80901	CISOTF HQ Facility	Bagram	Unprogrammed	20,000
ARCENT	81835	Sewer System	Kandahar	12 UMMC	1,300
ARCENT	80941	Billeting	Kandahar	12 UMMC	1,850
ARCENT	80942	Admin Building	Kandahar	12 UMMC	1,000
ARCENT	74171	Waste Mangement Area	Dwyer	10 OCO	10,000
ARCENT	AC10-3910	Cargo Handling	Dwyer	10 OCO	10,000
ARCENT	80893	Northern Region Logistics Hub	MeS	12 OCO	10,400
TOTAL:					63,550

ROUND 4 MilCon Review - Descoped Projects					Mar-13
Component	Project Number	Project Title	Base	Year/Program	Total PA (\$000s)
ARCENT	71605	Eastside Electrical Dist	Bagram	11 MCA	10,379
ARCENT	71568	Eastside Electrical Dist, Ph. 3	Bagram	12 MCA	16,100
ARCENT	71604	Eastside Utilities Infrastructure	Bagram	11 MCA	28,942
ARCENT	74084	CMU Barracks, Ph. 19-24	Bagram	12 MCA	19,300
ARCENT	71569	Westside Utilities Infrastructure	Bagram	12 MCA	18,000
ARCENT	Wests	Westside Electrical Infrastructure	Bagram	11 MCA	8,000
ARCENT	74067	Construct Drainage Sys, Ph. 4	Bagram	12 MCA	31,000
ARCENT	72477	USFOR-A HQ & Housing	Kabul	10 OCO	98,000
ARCENT	74172	Camp Phoenix Western Expansion	Kabul	10 OCO	39,000
ARCENT	74292	Warehouse (DLA)	Kandahar	10 OCO	20,000
ARCENT	74195	Water Distribution System	Shank	10 OCO	
ARCENT	77119	Roads & Utilities, Ph. 1	Shank	12 OCO	16,506
TOTAL:					305,227

BLT = Bastione, Leatherneck, Tombstone

3 of 3

Report to Congress
on
Uniform Contract Writing System Requirements



Office of the Under Secretary of Defense
for Acquisition, Technology, and Logistics

July 2013

This study/report cost the Department of Defense
an approximate total of \$4,000 for FY 2013.
Cost estimate generated on June 21, 2013. RefID: E-31D285E

Introduction

Section 862 of the National Defense Authorization Act for Fiscal Year 2013 requires development and implementation of uniform standards and controls for contract writing systems, as well as systems that conform to those, as follows:

(a) **UNIFORM STANDARDS AND CONTROLS REQUIRED.**—Not later than 180 days after the date of the enactment of this Act, the officials specified in subsection (b) shall—

(1) establish uniform data standards, internal control requirements, independent verification and validation requirements, and business process rules for processing procurement requests, contracts, receipts, and invoices by the Department of Defense or other executive agencies, as applicable;

(2) establish and maintain one or more approved electronic contract writing systems that conform with the standards, requirements, and rules established pursuant to paragraph (1); and

(3) require the use of electronic contract writing systems approved in accordance with paragraph (2) for all contracts entered into by the Department of Defense or other executive agencies, as applicable.

Section 862 further requires that the Secretary of Defense report to Congress on the implementation of the section, specifically:

(e) **REPORTS.**—Not later than 180 days after the date of the enactment of this Act, the officials specified in subsection (b) shall each submit to the appropriate committees of Congress a report on the implementation of the requirements of this section. Each report shall, at a minimum—

(1) describe the standards, requirements, and rules established pursuant to subsection (a)(1);

(2) identify the electronic contract writing systems approved pursuant to subsection (a)(2) and, if multiple systems are approved, explain why the use of such multiple systems is the most efficient and effective approach to meet the contract writing needs of the Federal Government; and

(3) provide the schedule for phasing in the use of approved electronic contract writing systems in accordance with subsections (a)(3) and (d).

Background

The Department of Defense has developed its contract writing systems and standards through an evolutionary approach to take advantage of improvements in technology. Beginning in the early 1990s, existing standards were replaced with modern variable length standards. These were developed in concert with commercial industry pursuant to the Office of Management and Budget Circular A-119, “Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities.” The Department partnered with other Federal Agencies and the American National Standards Institute (ANSI) to develop and publish standards for many basic contracting transactions, as well as for logistics

and other business processes. The Department's current systems and standards approach continues to rely on those standards, though additional capabilities have been added since 2007 to fill gaps found in implementation and address emerging needs. This approach enables standards application to both legacy and emerging systems. Use of these standards has enabled over 75 percent of contract data to flow electronically and over 85 percent of contracts to receive invoices and receiving reports electronically.

As the Department has implemented those standards and deployed the corresponding systems, revisions have been made to the Defense Federal Acquisition Regulation Supplement (DFARS) to ensure the business rules and internal control requirements of the business process and the system and data standards are in accord. Each of these has further been documented in the Business Enterprise Architecture, the current version of which is 10.0, delivered February 14, 2013 (<http://dcmo.defense.gov/products-and-services/business-enterprise-architecture/10.0/classic/index.htm>).

The Department relies on a data driven architecture. Monitoring systems to compliance with the standards in this architecture enables a system agnostic approach to managing procurement requests, contracts, receipts, and invoices. As a general rule, where the business transaction involves sharing data with industry or the public, the Department has followed the intent of the E-Government Act of 2002 (Public Law 107-347) by creating common data exchanges and a single face to industry independent of internal organizational alignment.

Standards

Procurement Requests

The Department of Defense Purchase Request Data Standard (PRDS) extensible markup language (XML) schema is posted at:

http://www.acq.osd.mil/dpap/pdi/eb/prds_data_standard.html.

Contracts

The Department of Defense Procurement Data Standard (PDS) XML schema is posted at:

http://www.acq.osd.mil/dpap/pdi/eb/procurement_data_standard.html.

Receipts

The Department uses the following ANSI data standards through its Wide Area WorkFlow (WAWF) system, which is used to meet the requirements of title 10, U.S.C., section 2227: 856 – Advance Shipment Notice, 857 – Combined Invoice and receiving Report, 527 – Receipt, and 861 – Acceptance. Guidance on the use of these standards is posted at:

<https://wawf-gt.nit.disa.mil/xhtml/unauth/web/homepage/EdiGuides.xhtml>.

Invoices

The Department uses the following ANSI data standards through WAWF: 810 – Invoice and 857 – Combined Invoice and receiving Report. Guidance on the use of these standards is posted at:

<https://wawf-gt.nit.disa.mil/xhtml/unauth/web/homepage/EdiGuides.xhtml>.

Requirements and Rules

The Department has instituted a variety of regulatory changes, system data validations, and data monitoring efforts to implement internal control requirements, independent verification and validation requirements, and business process rules. The regulatory changes consist of refinements to rules for document content and added requirements for document distribution. The latter ensures that actions are available for analysis in central repositories, can be distributed across the Department, and can be validated in central locations.

Regulatory Requirements and Rules

The Department has codified many data and process requirements in DFARS and the Department of Defense Federal Acquisition Regulation Supplement Procedures, Guidance, and Information (DFARS PGI). Most data and system requirements are found in Part 204, which addresses administrative issues. These include the requirement for the use of the Procurement Data Standard at DFARS PGI 204.201, line item numbering and content rules at DFARS 204.71, contract action numbering rules at DFARS 204.70, and contract action reporting rules at DFARS 204.6. Additional business rules, such as which contract clauses to use in each circumstance, are found throughout the Federal Acquisition Regulation (FAR) and DFARS.

System Controls and Edits

As part of its systems implementation, the Department is using software to create a common method of validating, implementing, and enforcing the business rules from FAR and DFARS. This consists of two capabilities. The first employs PDS and PRDS to enforce business rules on the data included in a contract and rules on the relationship between data elements. The second is a clause logic service that each contract writing system relies upon to determine which solicitation provisions and contract clauses are appropriate for each contract action.

Electronic Contract Writing Systems Approved

While the Department uses multiple contract writing systems for various business areas, as described below, it provides a single face to industry through the WAWF system, mentioned above, for delivery, acceptance, and invoicing. Likewise, the Electronic Document Access (EDA) system provides copies of contracts, contract data, and related documents to the contractor, government personnel, WAWF, and other systems. All contract writing systems are required to send contracts as both Portable Document Format and PDS XML to EDA.

Why the Use of Such Multiple Systems is the Most Efficient and Effective Approach

From 1995 to 2007, the Department developed and deployed the Standard Procurement System (SPS). Although SPS was widely adopted and achieved successes, there were places in the Department where systems had been developed earlier that offered efficiency advantages for those business subsectors. Two major categories of contracting that retained their earlier systems were major systems acquisition and spares procurement. Use of SPS for major weapon systems contracts has been less than optimal. In addition, SPS proved to be too cumbersome for the high volume contracting performed at inventory control points. At those locations, existing systems were highly integrated with the purchase request systems and enabled the contract specialist to write large numbers of simple contract actions quickly.

Thus, when it became apparent that the technological baseline for SPS, which predated the World Wide Web, would require replacement, the Department decided to move from a system centric approach to a standards centric approach. This approach treats contract writing as less of a stand-alone process than as part of an integrated data environment that encompasses the requirements development, logistics, and accounting processes. Rather than specify a single software solution, the standards based approach recognizes that a contract writing system that has been optimized for high volumes of simple contract actions cannot at the same time be optimal for writing and managing complex weapon systems contracts and that certain specialized business communities, such as telecommunications, may have requirements that are not easily optimized with the more general contracting areas.

In order to minimize variation in contracting and simplify the design and development process for the next generation of systems, the Department is developing common services to enable data and business rule validation, provide clause logic, and distribute data between contract writing systems and the associated accounting and logistics systems. Employing this modular plug and play approach simplifies system development and enables agencies to choose the best technical solution to their individual needs and business environments.

Approved Contract Writing Systems

DoD Components are currently engaged in analyses of alternatives for the next generation of contract writing systems. The result of that analysis will be a set of strategies for migration from the current legacy systems to a newer technical backbone designed to optimize use of the data standards, validation services, and clause logic service.

Conclusion

The Department believes that the standards and controls based approach described above is the best balance of efficiency and effectiveness for meeting its contract writing system requirements.

**Post-Hearing Questions for the Record
Submitted to the Richard “Dick” Ginman
From Senator Kelly Ayotte**

**“Implementation of Wartime Contracting Reforms”
July 16, 2013**

1. Question. Why did the Department of Defense (DoD) need the fiscal year 2012 NDAA section 841 and 842 authorities?

Answer. Task Force 2010 (TF 2010) identified some of the prime and sub-tier contractors receiving U.S. contracting dollars were possible members of the insurgency or were providing monetary support to organizations that support enemies of the United States. Contracting officers could not void such contracts due to a lack of authority to take such actions.

Existing law posed three obstacles that restricted the U.S. government’s insight into contractor/subcontractor performance and impeded the Department’s ability to uncover corruption arising under the contracts/subcontracts. These obstacles prevented the Department from accessing contractor or subcontractor records: (1) for procurement of commercial items below the simplified acquisition threshold; (2) for negotiated, non-commercial items acquisitions below the simplified acquisition threshold; and (3) when contracting for supplies and services (including construction) by sealed bidding procedures, regardless of dollar value.

The Department needed section 841 authority to immediately cease contracts with the enemy upon such determination and 842 authority to have access and examine any contractor and subcontractor records for an estimated contract value in excess of \$100,000 to uncover linkages to corruption and criminal networks in Afghanistan.

2. Question. From your perspective, how have the section 841 and 842 been useful to the Department of Defense?

Answer. Sections 841 and 842 of the National Defense Authorization Act for FY2012 have been extremely beneficial for the Department of Defense. During calendar year 2012, the Department used these authorities to identify enemies of the United States, resulting in the termination of ten subcontracts and withholding funds from one prime contractor. The dollar value associated with these actions was \$31M.

3. Question. Using these authorities, has the DoD been able to issue notification letters, identify problematic vendors, and terminate subcontracts—avoiding waste and potentially preventing tax dollars from going to those who undermine our interests in Afghanistan?

Answer. Pursuant to subsection 841(c), Identification of Contracts with Supporters of the Enemy, the USCENTCOM Commander issued three section 841 notification letters. The letters identified four Afghan vendors and 28 entities associated with those four vendors, as supporters

of our enemies. As a result, the Department terminated ten subcontracts held by two of these Afghan vendors, withheld funds from one prime vendor, and debarred one vendor so as to preclude future contract awards. This enabled the Department to stop the flow of \$31M.

4. Question. From a DoD perspective, do you believe that all U.S. acquisition officials, not just those in DoD, should have access to the same section 841 and 842 authorities? Why?

Answer. There would be benefit in all federal agencies having sections 841 and 842 authorities, especially those with global missions in countries that pose high security threat to the United States and our allies. These authorities are important tools for U.S. Government to obtain intelligence on local/foreign vendors and to prevent the flow of U.S. funds to insurgents, criminal networks, other individuals or entities that undermine the U.S. efforts in such countries.

5. Question. Regarding DoD's contract to purchase 30 new Mi-17 helicopters from Rosoboronexport, can you confirm whether or not reports that the existing Mi-17 helicopters set to be replaced may be retired well before meeting their maximum flight hours - some with only a half to a third of their standard flight hours - are true?

Answer. The Department's decision to purchase 30 Mi-17 helicopters for the Afghanistan National Security Force's Special Mission Wing (SMW) will not force the retirement of aircraft before they reach the limit of their service life. To maintain safety and airworthiness, the Afghan SMW fleet operates under the rules of Service Bulletin (SB) 2133, which is applicable to aircraft operating in a military environment and to the specific Mi-17 usage spectrum in Afghanistan. SB 2133 defines the aircraft service life with two parameters: age and flight hours. Specifically, SB 2133 defines the service life as 25 years or 7,000 flight hours. When an aircraft reaches either of those limits it must be retired, or a service life extension must be granted by the Mi-17 Design Authority, Mil Moscow Helicopter Plant (MMHP). Today's SMW fleet includes 10 modern Mi-17v5 aircraft on loan from the Afghan Air Force and 20 legacy aircraft that include aircraft on loan from or donated by the United States and other countries. While it is true that many of the legacy SMW aircraft have not reached 7,000 hours, this fact alone does not determine whether the aircraft have significant remaining service life as the average age of the legacy SMW aircraft is 24.5 years. With the exception of one aircraft that was donated by Germany, all of the aircraft are either approaching the end of their 25 year service life, or have already exceeded the 25 year service life and are operating on a service life extension. The table below provides detailed information on the age and the total since new (TSN) flight hours of the twenty aircraft in the SMW legacy fleet.

Special Mission Wing (SMW) Legacy Fleet						
No	Tail #	Factory Serial #	Model Type	Date of Manufacture	Age (years)	TSN (hours)
1	041	94041	Mi-8MTB-1	Sep-85	27.5	2,696
2	076	96076	Mi-8MTB-1	Jan-93	20.5	2,025
3	101	95931	Mi-8MTB-1	May-92	21.0	2,067
4	102	398M06	Mi-17-1V	Dec-04	8.5	313
5	185	96185	Mi-8MTB-1	Jan-94	19.5	1,418
6	233	94233	Mi-8MTB-1	Jun-86	27.0	4,084
7	291	93291	Mi-8MTB-1	Jun-82	31.0	3,627

Special Mission Wing (SMW) Legacy Fleet						
No	Tail #	Factory Serial #	Model Type	Date of Manufacture	Age (years)	TSN (hours)
8	303	108M03	Mi-8MTB-1	Nov-85	27.5	2,548
9	311	94311	Mi-17-1V	Jul-87	26.0	3,248
10	355	95355	Mi-8MTB-1	Mar-91	22.0	1,054
11	447	93447	Mi-8MTB-1	Jun-83	30.0	4,045
12	501	93314	Mi-8MTB-1	Aug-82	31.0	3,402
13	502	202M30	Mi-17-1V	Aug-91	22.0	3,659
14	503	95007	Mi-8MTB-1	Dec-88	24.5	3,025
15	505	94094	Mi-8MTB-1	Jan-86	27.5	1,836
16	506	94512	Mi-8MTB-1	Mar-89	24.0	827
17	510	93510	Mi-8MTB-1	Oct-83	30.0	3,202
18	609	95609	Mi-8MTB-1	Feb-91	22.5	371
19	805	108M05	Mi-8MTB-1	Jul-84	29.0	3,116
20	930	95930	Mi-8MTB-1	May-92	21.0	1,350

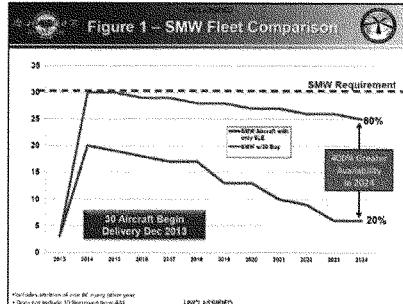
* Note: Aircraft 503 was recently identified by the Overhaul facility as potentially being a counterfeit aircraft. MMHP has inspected the aircraft and recommended it not be returned to service.

6. Question. If yes, what is the rationale behind this decision? Would overhauling their existing aircraft cost less? NOTE: This QFR continues from QFR#5.

Answer. Overhauling the aircraft would cost less upfront than procuring new aircraft but would result in an unacceptable rapid decline in the Afghan Security Force's Special Mission Wing (SMW) fleet over a ten-year period. In addition, overhaul of these civil variant Mi-17s would not meet the SMW requirement for militarized helicopters. The mission of the SMW includes both Counter Narcotics (CN) operations and Counter Terrorism (CT) operations. The organization that flew the legacy fleet prior to the standup of the SMW was only responsible for CN operations. The inclusion of CT missions in the SMW charter requires the capability provided by the Military variant Mi-17s that is not present in the legacy fleet.

Additionally, the operational environment in Afghanistan is extremely harsh and challenging to any rotary wing aircraft independent of the country of origin. Due to the operational environment, the US Army has experienced a 50% increase in its own maintenance costs, and has instituted a requirement to conduct a total reset of every airframe in the standard fleet (Chinook, Apache, etc.) after every two rotations in Afghanistan. Given this austere environment, it is impractical to assume that service life extension could continue to be granted despite the age of the aircraft and the operational environment. Prior to making the decision to procure the 30 new aircraft, the Department analyzed alternatives to meet the SMW requirement.

The chart below depicts SMW aircraft availability over time for either procuring aircraft or service life extending the legacy aircraft and assumes that every legacy aircraft could obtain two successful 7 year service life extensions, which is highly unlikely given the operational environment.



This analysis clearly showed that service life extension / overhaul would not provide the Afghan SMW with the required capability in the out years. This combined with the fact that service life extending the legacy fleet would not meet the SMW required capability for military aircraft, drove the decision to procure the 30 new aircraft.

7. Question. Our military regularly overhauls existing helicopters to extend their service life. If this policy is deemed appropriate for the U.S. military, why is not applied to the Afghan military?

Answer. The Mi-17s in the Afghan inventory are different in that they are operated and maintained in accordance with the processes and procedures established by the original equipment manufacturer and endorsed by the Russian airworthiness authorities and accepted by the U.S. Army airworthiness authority. The United States does not establish service life extension policy for Mi-17s. Part of the standard maintenance of the Mi-17 is periodic depot-level overhauls. However, these overhauls do not extend the service life of the airframe. The Russian process to extend aircraft service life is conducted in addition to the standard overhaul process. The aircraft must be inspected by the design authority, and the extension of the service life is dependent upon the condition of the airframe at the time that Mil Moscow Helicopter Plant conducts this inspection.

8. Question. Do you believe we should help train the Afghans to operate and maintain their existing aircraft before we purchase new ones for them?

Answer. Yes. The Department is actively engaged in training Afghans to operate and maintain their existing aircraft and the purchase of new aircraft will allow for a significant acceleration of Afghan training. The table below that outlines each fixed-wing aircraft and Mi-17 operational capability dates.

Aircraft	Initial Operational Capability(IOC) (basic crews ready)	Full Operational Capability (FOC) (1.5 crew ratio per A/C, plus perform missions)
PC-12 (Spec Msn Wg)	3d Quarter (Q) 2015	3d Q 2016
Mi-17 helicopter	Already IOC	With 86 air craft (a/c) FOC 1st Q 2016
C-208 light lift plane	Already IOC	With 26 a/c FOC 1st Q 2015
C-130 medium lift	1st Q 2016	With 4 a/c FOC 4th Q 2018
A-29 light attack plane	4th Q 2016	With 20 a/c ~2019

Current training program in place: All pilot trainees regardless of platform are required to achieve a minimum English language skill score before starting flight training. Most fixed-wing pilot training occurs at Shindand Air Base (AB), Afghanistan. Students learn basic flight skills in the Cessna C-182 and then progress to the Cessna C-208 for advanced training. Other initial pilot training occurs in the United Arab Emirates (UAE) and the Czech Republic. Classes are full and training is progressing well. The C-182 and C-208 are less complicated to maintain and have high sortie production rates. C-130 training is at Little Rock Air force Base, Arkansas. Two students are in training and scheduled for completion commensurate with the delivery of the first aircraft in September/October 2013. Six other C-130 pilot candidates are in English training and will start C-130 training in the spring of 2014. The remaining 12 C-130 pilot candidates have been identified but have not started training. C-130 loadmasters and engineers have been identified and are enrolled in English language training. The initial two C-130 aircraft will commence operations in the fall of 2013 with U.S. Air Force aircrew support.

Training Pipeline: 104 students are in Undergraduate Pilot Training, Undergraduate Helicopter Pilot Training or Initial qualification Training. Six in the United States, 48 in UAE, and 50 at Shindand AB. There are 441 students (aircrew and maintenance) in English training (various locations) – a 300% increase in the last six months.

9. Question. How much does it cost to procure new Mi-17s versus overhauling existing aircraft?

Answer. The cost to procure the 30 military Mi-17s for the Special Mission Wing (SMW) was \$18.25 million (M) per aircraft. This price is for a military aircraft that is fully mission capable and airworthy to both Russian Ministry of Defense and U.S. Army standards, and fully meets the SMW requirement. The cost to overhaul, service life extend, and modernize the cockpit to make the legacy aircraft somewhat comparable to those being procured from the Russian joint stock company Rosoboronexport is estimated at approximately \$10M per aircraft. However, since the SMW legacy fleet is comprised of civil variant Mi-17s, it should also be noted that this would not provide the unique capabilities of the military aircraft, it would not fully meet the SMW requirement, and it would provide that limited capability only for a short period of time. The procurement of 30 military aircraft for the SMW will provide the full required capability by 2014, and this capability will be sustainable in the out years. The attached illustration identifies the unique capabilities and characteristics of the military variant Mi-17 that are not present on civil variant Mi-17s.

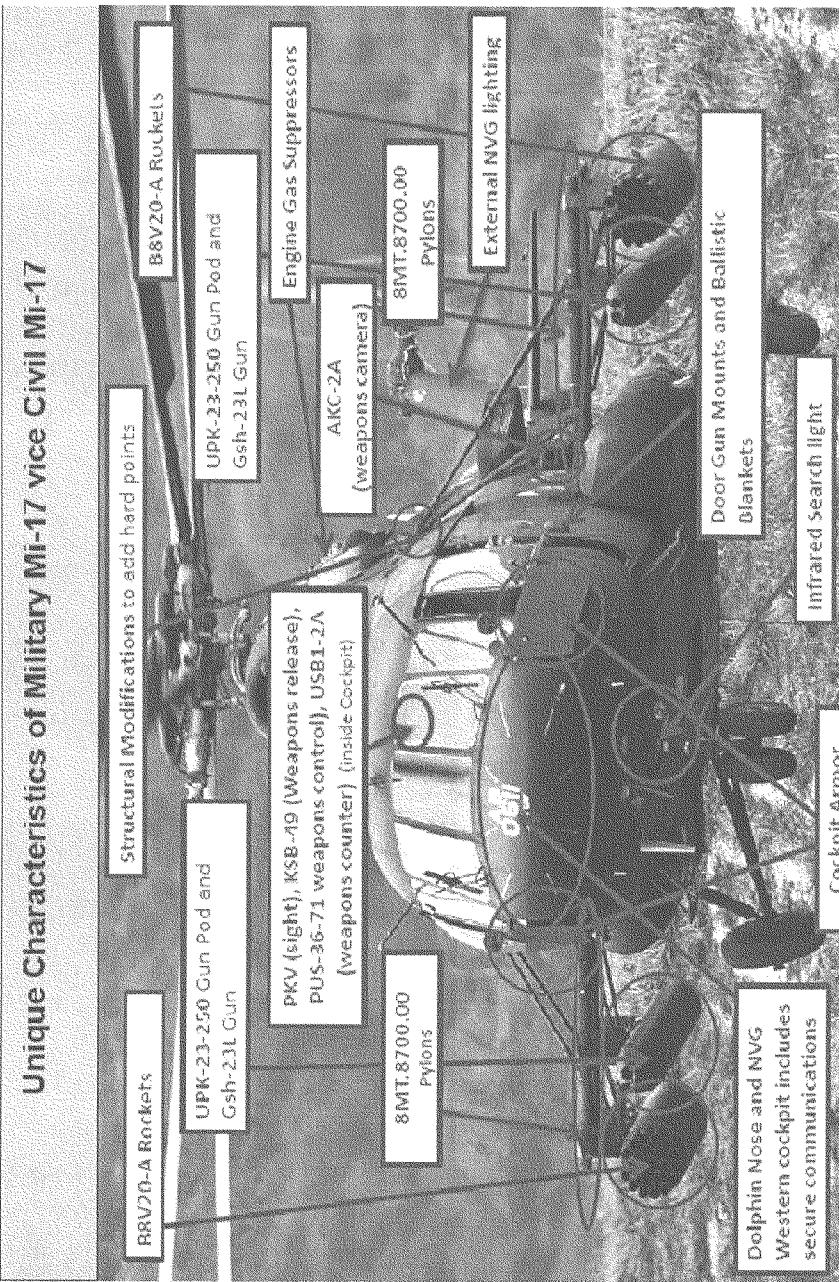
Attachment:
Mi-17 Illustration

10. Question. Are you aware of Rosoboronexport's relationship with the Assad regime and its activities in Syria?

Answer. I am aware that the Russian government has shipped some arms to the Syrian regime of Bashar al Assad and that the Russian joint stock company Rosoboronexport, as the official Russian arms export entity, likely has a role in these transactions. As explained in the response to Question # 11, the Department is addressing these concerns.

11. Question. Can you help me understand why DoD continues to give hundreds of millions of taxpayer dollars to a state-owned arms export corporation that actively arms the Assad regime in Syria and is complicit in the deaths of thousands of innocent men, women, and children?

Answer. The Department of Defense is concerned about arms shipments to the Syrian regime of Bashar al Assad and the U.S. government has raised these concerns directly with the Russian government. Our involvement with the Russian joint stock company Rosoboronexport is very limited and exists primarily to support the Afghan National Security Force.



Post-Hearing Questions for the Record
Submitted to the Richard "Dick" Ginman
From Senator Tom Coburn

"Implementation of Wartime Contracting Reforms"
July 16, 2013

1. Question. Most of our contracting reforms focus on improving contract management and coordination. What processes are in place to ensure we are getting the best value and outcomes for our efforts? What is the appropriate balance between "program management and outcome planning" and "contract management"?

Answer. Striking the appropriate balance between planning, program management, and contract management is a challenge for DoD and non-DoD agencies alike, particularly during contingencies. The Department has worked to more effectively integrate these distinctly different—and at times competing—functions to get the best value and results for our efforts. The DoD functional leaders for these areas work together on a permanent board to provide strategic guidance to the multiple stakeholders working to institutionalize operational contract support (OCS). The board includes all relevant stakeholders, including USD(AT&L) who is responsible for OCS policy and contingency contracting; Joint Staff, which is charged with joint OCS planning and formulating doctrine; and the Combatant and Service Component Commanders, who have the duty of OCS planning and selecting organizational options for theater and external contract management and OCS execution. The board measures progress against an action plan for FYs 2013 to 2016 that addresses 142 major actions to close the 10 highest-priority capability gaps, strengthen our ability to execute OCS, and support a Joint Force Commander. Through this concerted effort, we are ensuring a robust approach to OCS, since planning, program management, and contract management are all important to the success OCS.

Examples of the progress we have made with respect to OCS program management include: improved planning for contracted support; establishment of an OCS Integration / Drawdown Cell in Afghanistan to insure transition in USFOR-A is synchronized with operational requirements and retrograde activities; increased staffing for contract oversight to better prevent and detect fraud; better training programs for deployed military who oversee contractor personnel; improved accountability and visibility of contractors supporting contingency operations and, updated policy and doctrine to institutionalize OCS to enable a culture change for future operations. Specifically, Joint Publication 4-10, Operational Contract Support, establishes doctrine for planning, conducting, and assessing operational contract support integration and contractor management functions in support of joint operations; and DoD Directive 3020.49, Orchestrating, Synchronizing and Integrating Program Management of Contingency Acquisition Planning and Its Operational Execution, establishes policy and assigns responsibilities for program management for the preparation and execution of acquisitions for contingency operations.

USD(AT&L) has established a Services Acquisition (SA) directorate to oversee and improve services acquisitions, which constitute more than half of DoD's contacted obligations.

Planning, managing, and overseeing contractors performing service functions demands a different approach than that used to oversee contractors developing our weapon systems. The SA directorate is leading the improvement of DoD's tradecraft in acquisition of services, which is a key part of the Department's Better Buying Power (BBP) efficiencies initiative. To deliver better value to both the warfighter and the taxpayer while improving the way the Department does business, the Services Acquisition directorate is establishing a stand-alone DoD instruction solely for the acquisition of services; Functional Domain Experts to manage services portfolios; Service Requirement Review Boards and Tripwires to better manage and validate requirements; and appropriate metrics to actively manage services acquisitions. Additionally, DoD is working on strengthening services contract management outside of the normal acquisition chain (e.g. installations and commands) as well as developing processes to ensure non-Defense Acquisition Workforce Improvement Act individuals involved in services acquisitions are properly trained. This new management structure and training capabilities, coupled with changes in the way DoD analyzes and tracks services acquisitions, will allow the Department to continuously improve, from requirements definition to closeout, focusing on outcome-based capabilities.

2. Question. In the case of the Camp Leatherneck HQ facility, you testified that the project could have been stopped at any point during its construction. How does an acquisition professional or a military or civilian agency project manager stop a project that has already been started? Please provide a complete account of all DOD administered projects to date, in both Iraq and Afghanistan, for which funding and support (both service member and contractor) have been stopped, including the total project cost, the stage at which each project was stopped, the total amount expended at the time the project was stopped, and the total amount saved.

Answer. The attached detailed list provides details of cancelled and de-scoped military construction (MilCon) projects in Afghanistan for Operation Enduring Freedom from 2011 forward; military construction projects in Iraq were concluded prior to the end of Operation New Dawn in late 2011, and therefore, were not included. The information provided includes the Component, project number, project title, military base, program, and total program amount (PA), in dollars (representing the amount Congress allocated for the program). US Forces – Afghanistan (USFOR-A) continues to collect and analyze the relevant data that will address the specifics concerning stage of completion for canceled/de-scoped projects. The amount of associated cost savings per project is comprised of numerous factors which transcend the actual cost of a project (e.g. sustainment); therefore, the attached list does not address cost savings/avoidance per project.

As shown in the attached list of cancelled and de-scoped military construction projects in Afghanistan, with respect to Military Construction (MilCon) projects since November 2011, DoD has conducted four rounds of project reviews in order to identify unneeded projects, resulting in the cancellation or de-scoping of 123 projects.

The first round of MilCon project reviews was conducted in November 2011. At the start of this round, a moratorium on the issuance of Notice to Proceed letters and on starting new construction was issued. In this round, 53 MilCon projects were canceled or de-scoped. The second round of MilCon project reviews was conducted in February 2012. In this round, 25 MilCon projects were canceled or de-scoped.

The third round of MilCon project reviews, conducted in July 2012, focused specifically on infrastructure at Bagram, Kandahar, Leatherneck, Dwyer, Shindand, Mazar-e-Sharif, and Shank, omitting Special Operations Force projects. In this round, 24 MilCon projects, were canceled or de-scoped.

The fourth round of MilCon project reviews was conducted in March 2013 and focused on all ongoing MilCon, with a particular emphasis on Bagram and Kandahar. In this round, all MilCon projects were assessed against future basing posture, including cost/benefit analysis. One goal of this round was to assess MilCon projects against infrastructure requirements for the enduring post-2014 mission. In this round, nine MilCon projects were canceled; and 12 projects were de-scoped.

A fifth round of MilCon reviews began in early July 2013 and is expected to be completed in late August 2013. This round is focusing on the remaining 40 MilCon projects in Afghanistan and will look to terminate or de-scope any project that does not have a current requirement. Cancellation/de-scoping decisions will be based on an analysis of the cost benefits of cancellation against the percentage of work already completed.

In addition to these aforementioned formal MilCon reviews, PDTs continually review project requirements in an effort to help ensure that ongoing and planned projects are necessary to meet current mission needs.

Attachment:
US Forces – Afghanistan MilCon Project Cancellation/Descope List (3 pages)

3. Question. In a SIGAR report released this May, auditors found that DOD, State and USAID had reimbursed contractors for what are likely illegitimate Afghan tax expenditures—the report specifically notes one contractor who reported being reimbursed by DOD more than \$287,000 in tax assessments, and a total of \$92,875,298 in assessments on DOD contractors. What is the total amount DOD has reimbursed to contractors for Afghan taxes paid? Of that total, how much was incorrectly reimbursed? How much has DOD recovered to date from funds that were incorrectly reimbursed to contractors for illegitimate tax expenditures?

Answer. The Department is working closely with the State Department and others regarding the broad tax exemption afforded to U.S. government contractors and subcontractors under the U.S.-Afghanistan Status of Forces Agreement. We do not require contractors to report the information that you requested; therefore, we are unable to provide a quantitative answer to the specific questions. To ensure compliance with the broad tax exemption afforded to U.S. government contractors and subcontractors, DoD has taken a systemic approach, providing clarification and templates. DoD policy issuances identify contractor responsibility to exclude Afghan taxes from contract price.

The Department concurred with, and is implementing, SIGAR's recommendations in

SIGAR Audit 13-8.¹ Specifically, U.S. Central Command (CENTCOM)'s Joint Theater Support Contracting Command (CJTSCC) issued a January 21, 2013, memorandum and information paper for heads of contracting activities. This issuance explains the tax exemptions for DoD contractors and subcontractors performing in Afghanistan, identifies key governing treaties and agreements,² and provides templates to assist contractors in obtaining the appropriate tax exemptions from the Government of Afghanistan. Additionally, an upcoming revised CJTSCC Acquisition Instruction will include foreign tax provisions for use in solicitations and contracts.

Most recently, on July 17, 2013, the Director of Defense Procurement and Acquisition Policy (DPAP) rolled out policy clarification to all contracting officers, via a regulatory deviation (Class Deviation 2013-O0016, Taxes—Foreign Contracts in Afghanistan). The deviation includes related clauses to be added to all solicitations and contracts to be performed in Afghanistan and is accessible on http://www.acq.osd.mil/dpap/dars/class_deviations.html.

4. Question. If our goal is to eventually leave Afghanistan a stable country, capable of its own governance to the greatest extent possible, how does paying taxes for Afghans help accomplish that goal? Does it work counterproductive to our need to establish a culture of rule of law when we don't hold Afghan companies accountable for basic responsibilities, such as paying taxes? Was this point ever discussed during the deliberations over whether or not these taxes could or should be reimbursed?

Answer. The Department of Defense (DoD) does not pay Afghan taxes on behalf of Afghan companies. DoD does pursue a worldwide policy of tax exemptions for DoD contracts and DoD-related purchases abroad, typically through bilateral international agreements. There are two agreements currently in place with the Afghan Government that provide exemptions from Afghan taxes for DoD-related contracts and purchases. These are the bilateral status of forces agreement concluded by an exchange of diplomatic notes in 2003, and the NATO International Security Assistance Force (ISAF) Military Technical Agreement of April 2002. Under these agreements, Department of Defense military and civilian personnel, DoD contractors, and, in certain instances, DoD contractor employees, including local Afghan vendors, are not liable to pay any tax or similar charge assessed by the Afghan Government on their activities relating to DoD contracts and purchases.

The Department is aware of specific cases where taxes have been assessed inappropriately on activities that were tax-exempt under these agreements. The U.S. Embassy, U.S. Forces Afghanistan, and ISAF work closely to try to resolve instances of improper taxation. As indicated in the May 14, 2013 SIGAR Audit 13-8, "Taxes: Afghan Government Has Levied Nearly a Billion Dollars in Business Taxes on Contractors Supporting U.S. Government Efforts in Afghanistan," on contractor taxation, only seven percent of the tax assessments under dispute have actually been paid

¹ SIGAR Audit 13-8 recommended that the Department of State, U.S. Agency for International Development, U.S. Army Corps of Engineers, and U.S. Central Command (CENTCOM)'s Joint Theater Support Contracting Command (CJTSCC): (1) develop procedures for contractors to obtain appropriate documentation of tax-exempt status with the Afghan government, (2) issue guidance to properly identify taxes in contracts and invoices, and (3) take steps to prevent the improper reimbursement of taxes to contractors.

² Key governing materials include the State Department's Diplomatic Note 202 of May 2003, the Military Technical Agreement of April 2002, the Exchange of Notes between NATO and Afghanistan of 2004, and the Letter of Interpretation issued by the Commander, ISAF, in March 2011.

to the Afghan government. In addition to advocating on behalf of individual companies that have received erroneous tax assessments from the Afghan Government, the U.S. Embassy in Kabul is also engaging the Ministry of Finance regarding its taxation of foreign contractors generally, urging the Ministry to re-examine the issue of linking tax payments to the renewal of business licenses and visas.

US Forces - Afghanistan MilCon Project Cancellation/Descope List

ROUND 1 MilCon Review					Nov-11
Component	Project Number	Project Title	Base	Year/Program	Total PA (\$000s)
ARCENT	67346	C-IED Road Qalat to Shinkay	Qalat	07 MCA Suppl	57,000
ARCENT	73195	Contingency Housing	Dwyer	09 OCO	3,800
ARCENT	73080	Avn Hangar/Maint Facilities	Sharana	09 OCO	11,200
ARCENT	73232	RW Ramps & Taxiway, Ph1/2	Sharana	09 OCO	39,000
ARCENT	73367	RW Ramps & Taxiway, Ph2/2	Sharana	09 OCO	29,000
ARCENT	73409	Fuel Distribution System	Tarin Kowt	09 OCO	8,000
ARCENT	AUTH 09-3039	CAS Ramp NDI Pad	Bagram	10 CCA	1,951
ARCENT	77437	Wastewater Treatment Facility	Delaram II	10 CCA	9,400
ARCENT	71493	Perimeter Fence/Guard Towers	Bagram	10 MCA	7,000
ARCENT	WACC 11-3220	Runway	Sharana	10 MCA 2808	35,000
ARCENT	76906	Waste Management Area	Delaram II	10 MCA Suppl	5,600
ARCENT	76950	Fuel Storage System	Dwyer	10 MCA Suppl	13,600
ARCENT	75509	TF Freedom	Bagram	10 OCO	18,000
ARCENT	74143	ECP 2	BLT	10 OCO	14,200
ARCENT	74147	Fuel System Ph 1/2	Dwyer	10 OCO	5,800
ARCENT	74206	RW Parking	Sharana	10 OCO	32,000
ARCENT	74207	Replace ASP	Sharana	10 OCO	14,000
ARCENT	74181	Waste Management Area	Tarin Kowt	10 OCO	6,800
ARCENT	74145	Fuel System Ph 2/2	Tarin Kowt	10 OCO	11,800
ARCENT	76964	Fire Station	Spin Boldak	10 UMMC	1,850
ARCENT	74158	Troop Housing, Ph8	Bagram	11 OCO	29,000
ARCENT	75199	Dining Facility	Dwyer	11 OCO	9,000
ARCENT	75203	RW Apron	Dwyer	11 OCO	44,000
ARCENT	75213	Wastewater Treatment Facility	Frontenac	11 OCO	4,200
ARCENT	74129	Replace JAF ASP	Jalalabad	11 OCO	35,000
ARCENT	75198	RW Parking & Taxiway, Ph 2	Tarin Kowt	11 OCO	24,000
ARCENT	74062	Entry Control Point	Bagram	12 MCA	20,000
ARCENT	74095	Replace Temp Guard Towers	Bagram	10 MCA	7,000
ARCENT	79423	Waste Management Area	Wilson	10 MCA	5,600
ARCENT	74126	CMU Barracks Ph 1-5	Kandahar	11 MCA 2808	29,000
ARCENT	80249	Waste Water Treatment Plant	Wilson	11 MCA 2808	4,200
ARCENT	77578	Dining Facility (2000PAX)	Shindand	11 MCA 2808	8,700
ARCENT	80024	Waste Water Treatment Facility	Kandahar	12 MCA 2808	6,900
ARCENT	77577	Dining Facility	Tarin Kowt	12 MCA 2808	6,000
ARCENT	77586	Dining Facility	Dwyer	12 MCA 2808	14,800
ARCENT	71609	Consolidated Motorpool	Bagram	14 MCA	12,000
ARCENT	UMMC	MSA Bomb Build Facility	Kandahar	UMMC	1,800
ARCENT	UMMC	3 Story Bilingting Ph 1	Bagram	UMMC	1,750
ARCENT	UMMC	3 Story Bilingting Ph 2	Bagram	UMMC	1,750
ARCENT	UMMC	3 Story Bilingting Ph 3	Bagram	UMMC	1,750
ARCENT	UMMC	3 Story Bilingting Ph 4	Bagram	UMMC	1,750
ARCENT	UMMC	3 Story Bilingting Ph 5	Bagram	UMMC	1,750
ARCENT	UMMC	3 Story Bilingting Ph 6	Bagram	UMMC	1,750
ARCENT	UMMC	3 Story Bilingting Ph 7	Bagram	UMMC	1,750
ARCENT	UMMC	3 Story Bilingting Ph 8	Bagram	UMMC	1,750
ARCENT	UMMC	South Park AAFES PX	Kandahar	UMMC	860
ARCENT	UMMC	Boardwalk Area and Ablution Sta.	Kandahar	UMMC	1,370

BLT = Bastione, Leatherneck, Tombstone

1 of 3

US Forces - Afghanistan MilCon Project Cancellation/Descope List

Component	Project Number	Project Title	Base	Year/Program	Total PA (\$000s)
ARCENT	UMMC	Retrograde Storage Area	Qalat	UMMC	1,300
ARCENT	UMMC	C130 Strip Repair	Qalat	UMMC	1,993
ARCENT	UMMC	Perimeter Expansion	Tarin Kowt	UMMC	1,450
ARCENT	UMMC	Guard Towers	Tarin Kowt	UMMC	1,700
ARCENT	UMMC	Sewer Collection System	Shindand	UMMC	1,250
ARCENT	UMMC	Hazmat Storage Area	Shindand	UMMC	2,000
TOTAL:					612,124

ROUND 2 MilCon Review**Feb-12**

Component	Project Number	Project Title	Base	Year/Program	Total PA (\$000s)
ARCENT	75148	C-IED TF Compound	Bagram	11 OCO	24,000
ARCENT	77132	C-IED Lab	Bagram	11 OCO	13,800
ARCENT	77438	Entry Control Pt & Access Roads	Delaram II	11 OCO	4,400
ARCENT	73408	Fuel Distribution	Dwyer	11 OCO	8,000
ARCENT	75200	Waste Management Facility	Dwyer	11 OCO	16,000
ARCENT	74127	Contingency Hsng Ph5	Kandahar	11 OCO	20,000
ARCENT	74129	Contingency Hsng Ph6	Kandahar	11 OCO	20,000
ARCENT	77118	ASP	Shank	11 OCO	23,000
ARCENT	74462	Bulk Materials Transfer Station	Sharana	11 OCO	12,400
ARCENT	71612	AAFES Complex	Bagram	Unprogrammed	6,500
ARCENT	77570	Dining Facility	Bagram	11 2808	6,000
AFCENT	ATUH 15-0001	East Side Taxiway w/Arm/De-Arm	Bagram	Unprogrammed	40,000
AFCENT	ATUH 15-0002	Wing Consolidated Spt Complex	Bagram	Unprogrammed	8,000
AFCENT	ATUH 16-0002	Mission Support Gp Complex	Bagram	Unprogrammed	8,000
AFCENT	ATUH 17-0002	East Side Ops Gp Complex	Bagram	Unprogrammed	9,000
AFCENT	ATUH 17-0001	East Side Mx Gp Complex	Bagram	Unprogrammed	9,000
ARCENT	77585	Dining Facility	BLT	11 2808	17,500
ARCENT	80028	Washrack (50 pt)	BLT	Unprogrammed	17,000
ARCENT	UMMC	Cargo Handling	BLT	Unprogrammed	1,000
ARCENT	UMMC	Cargo Storage	BLT	Unprogrammed	1,200
ARCENT	UMMC	South Wash Station	BLT	Unprogrammed	1,800
ARCENT	79425	Waste Management Area	Dwyer	11 2808	5,600
ARCENT	80107	Washrack (24 pt)	Dwyer	Unprogrammed	14,800
ARCENT	UMMC	Air Traffic Control	Dwyer	Unprogrammed	1,000
ARCENT	UMMC	Hazmat Storage	Dwyer	Unprogrammed	2,000
TOTAL:					290,000

ROUND 3 MilCon Review**Jul-12**

Component	Project Number	Project Title	Base	Year/Program	Total PA (\$000s)
ARCENT	74145	MedLog Warehouse	Bagram	10 OCO	4,500
ARCENT	74136	Medical C2 Facility	Bagram	10 OCO	3,500
ARCENT	BAGR 11-3009	AFOSI Facility	Bagram	11 OCO	1,670
ARCENT	71567	Eastside Utilities, Ph. 2	Bagram	11 UMMC	8,000
AFCENT	BAGR 14-0001	Construct Aircraft Hangar	Bagram	12 2808	49,000
AFCENT	BAGR 14-0002	Consolidated Comm Complex	Bagram	14 MCA	18,000
AFCENT	BAGR 16-0004	Tactical Ramp & Supp Facilities	Bagram	17 MCA	20,000

BLT = Bastione, Leatherneck, Tombstone

2 of 3

US Forces - Afghanistan MilCon Project Cancellation/Descope List

Component	Project Number	Project Title	Base	Year/Program	Total PA (\$000s)
AFCENT	BAGR 17-0001	Consolidated Ops & Mx Group HQ	Bagram	18 MCA	9,000
ARCENT	77056	Vet Clinic & Kennel	Bagram	11 OCO	2,600
ARCENT	77055	Role 3 Hospital	Bagram	11 OCO	42,000
ARCENT	69404	Joint Defense Ops Center	Bagram	11 MCA	2,794
ARCENT	74157	Contingency Housing, Ph. 7	Bagram	11 OCO	29,000
ARCENT	80451	Ammunition Supply Point (ASP)	Bagram	12 2808	62,000
ARCENT	79424	Waste Management Area	BLT	12 2808	5,500
ARCENT	75204	DFAC (2000 PAX)	BLT	11 OCO	27,000
ARCENT	75206	Waste Water Treatment Facility	BLT	11 OCO	13,000
ARCENT	77440	Paved Roads	BLT	11 OCO	9,800
ARCENT	80943	Perimeter Fence	Dwyer	12 UMMC	1,650
ARCENT	77117	SOF Helicopter Apron	Herat	11 MCA	13,200
ARCENT	77100	SOF Joint Operations Center	Kandahar	11 OCO	9,200
ARCENT	80998	Gymnasium (K-span)	Kandahar	12 UMMC	1,450
ARCENT	81081	Solar Lights & Sidewalks	Kandahar	12 UMMC	1,650
ARCENT	78039	SOF Heli Apron	Kunduz	10 UMMC	1,950
ARCENT	77446	Waste Water Treatment Plant	Shank	11 OCO	7,700
TOTAL:					344,164

ROUND 4 MilCon Review - Cancelled Projects					Mar-13
Component	Project Number	Project Title	Base	Year/Program	Total PA (\$000s)
ARCENT	80938	SOF Planning Facility	Bagram	12 UMMC	2,000
ARCENT	72242	Army Aviation HQ Facility	Bagram	11 MCA	7,000
ARCENT	80901	CJSOTF HQ Facility	Bagram	Unprogrammed	20,000
ARCENT	81835	Sewer System	Kandahar	12 UMMC	1,300
ARCENT	80941	Billeting	Kandahar	12 UMMC	1,850
ARCENT	80942	Admin Building	Kandahar	12 UMMC	1,000
ARCENT	74171	Waste Management Area	Dwyer	10 OCO	10,000
ARCENT	AC10-3910	Cargo Handling	Dwyer	10 OCO	10,000
ARCENT	80893	Northern Region Logistics Hub	MeS	12 OCO	10,400
TOTAL:					63,550

ROUND 4 MilCon Review - Descope Projects					Mar-13
Component	Project Number	Project Title	Base	Year/Program	Total PA (\$000s)
ARCENT	71605	Eastside Electrical Dist	Bagram	11 MCA	10,379
ARCENT	71568	Eastside Electrical Dist, Ph. 3	Bagram	12 MCA	16,100
ARCENT	71604	Eastside Utilities Infrastructure	Bagram	11 MCA	28,942
ARCENT	74084	CMU Barracks, Ph. 19-24	Bagram	12 MCA	19,300
ARCENT	71569	Westside Utilities Infrastructure	Bagram	12 MCA	18,000
ARCENT	Wests	Westside Electrical Infrastructure	Bagram	11 MCA	8,000
ARCENT	74067	Construct Drainage Sys, Ph. 4	Bagram	12 MCA	31,000
ARCENT	72477	USFOR-A HQ & Housing	Kabul	10 OCO	98,000
ARCENT	74172	Camp Phoenix Western Expansion	Kabul	10 OCO	39,000
ARCENT	74292	Warehouse (DLA)	Kandahar	10 OCO	20,000
ARCENT	74195	Water Distribution System	Shank	10 OCO	
ARCENT	77119	Roads & Utilities, Ph. 1	Shank	12 OCO	16,506
TOTAL:					305,227

**Questions for the Record Submitted to
Under Secretary Patrick Kennedy by
Senator Claire McCaskill (1)
Senate Committee on Homeland Security and Governmental Affairs
July 16, 2013**

Question:

The 2013 National Defense Authorization Act (NDAA) wartime contracting reforms instituted significant organizational, procedural and reporting changes for the Department of State (State), including mandating risk assessments. An overriding purpose of these reforms was to prevent State from entering contracts that would have harmed American interests or wasted American tax dollars.

What specific State contract, project or program was successfully stopped because of NDAA wartime contracting reforms?

Answer:

No Department of State contracts, projects or programs have been stopped because of the NDAA 2013 wartime contracting reforms signed into law in January 2013.

**Questions for the Record Submitted to
Under Secretary Patrick Kennedy by
Senator Claire McCaskill (2)
Senate Committee on Homeland Security and Governmental Affairs
July 16, 2013**

Question:

NDAA Section 844 demands increased information and accuracy regarding contracts and contractor personnel in contingency operations. In order to determine the progress of State's data collection and reporting, please provide the following information for July 16, 2013 (or indicate that State does not yet have the capability of either collecting or generating the information).

Q: What is the total number of contracts that State has entered into in Afghanistan?

Q: What is the value of those contracts?

Q: What is the total number of contractor personnel that State has in Afghanistan?

Q: What is the total number of security personnel that State has in Afghanistan?

Q: What is the total number of State contractor casualties in Afghanistan?

Answer:

The Department of State has 87 active contracts in Afghanistan*. The value of these contracts is \$422 million. According to the Synchronized Predeployment and Operational Tracker, the database of record, in July 2013, there were 3,582 contractors performing on a State contract in Afghanistan. The total number of contract security personnel in Afghanistan was 2,781.

The Department does not keep a record of State-specific data on casualties, but rather relies on the Department of Labor's Office of Workers' Compensation (OWCP) Defense Base Act (DBA) Case Summary Report. To standardize

reporting beginning in FY 2012, the Department, DoD and USAID decided to report casualty data in a consolidated manner using the OWCP DBA Case Summary Report. The report, which is pulled at the end of the fiscal year, provides data on the total number of DBA cases created during the period from all employers that have contracts with the federal government. We will provide this data as soon as it is available.

**Source data is from FPDS-NG.*

**Questions for the Record Submitted to
Under Secretary Patrick Kennedy by
Senator Claire McCaskill (3)
Senate Committee on Homeland Security and Governmental Affairs
July 16, 2013**

Question:

NDAA Section 861 requires State to identify Suspension and Debarment officials, ensure their independence from the acquisition office, and to effectively staff and resource them. State identified its Suspension and Debarment official as the Procurement Executive, an official outside of the Primary Acquisition Office.

Q: Given that the Procurement Executive is responsible for determining policy regarding how acquisitions are made, how is this official sufficiently independent from acquisition decision-making to comply with the intent of Section 861?

Answer:

The Procurement Executive is not involved in the source selection process for grants or contracts and is independent of award decisions. The Director of the Office of Acquisitions Management (A/LM/AQM) is the Head of Contracting Activity (HCA). The HCA reports to the Deputy Assistant Secretary for Logistics Management (A/LM), who reports to the Chief Acquisition Officer (CAO) (who is the Bureau of Administration Assistant Secretary). Source selection activity follows this chain of command. The Procurement Executive reports separately to the Chief Acquisition Officer and is not in the source selection chain. Determining acquisition policy provides the Procurement Executive with the necessary expertise

to make debarment and suspension determinations based on a firm understanding of the acquisition and grants-making processes.

**Questions for the Record Submitted to
Under Secretary Patrick Kennedy by
Senator Claire McCaskill (4)**
Senate Committee on Homeland Security and Governmental Affairs
July 16, 2013

Question:

One of the major concerns in wartime contracting has been the numbers of contractors who overrun budgets, fall behind schedule, or fail to fulfill their promised performance—and yet are awarded new contracts for different projects. Recently, in an effort to help solve this problem, the Office of Management and Budget announced a goal of 100% reporting by 2015.

Q: What is your current level of past performance reporting?

Answer:

The Department of State is currently reporting 17% of transactions in the past performance database. The Department will continue to seek improvement in its past performance reporting.

**Questions for the Record Submitted to
Under Secretary Patrick Kennedy by
Senator Claire McCaskill (5)
Senate Committee on Homeland Security and Governmental Affairs
July 16, 2013**

Question:

During State's staff briefing with the subcommittee, State indicated that it was endeavoring to increase its past performance reporting to 65% for the 2013 calendar year. State indicated that this was a goal set by OMB. During the Office of Federal Procurement Policy (OFPP)'s staff briefing with the subcommittee, OFPP agreed that OMB had set a 2015 goal, but denied that OMB had set any 2013 agency goals for performance reporting.

Q: What is State's 2013 past performance reporting goal and who set it?

Answer:

The Office of Management and Budget (OFPP) indicated that agencies should target improved past performance reporting and recommended 65% for agencies with lower levels of current reporting. As I said during my testimony, I have set a goal of 45 to 50% for the Department and will continue to seek improvement in our past performance reporting.

**Questions for the Record Submitted to
Under Secretary Patrick Kennedy by
Senator Claire McCaskill (6)
Senate Committee on Homeland Security and Governmental Affairs
July 16, 2013**

Question:

Section 841 of the 2012 NDAA, “Prohibition on Contracting with the Enemy in the United States Central Command Theater of Operations,” sought to prevent contractors from funding insurgents in Afghanistan. Senate bill S.675, the “Never Contract With The Enemy Act,” would amend Section 841 to apply worldwide, without ties to a military operation and expand its scope to those who “support” the enemy.

Does State support Senate bill S.675? Why or why not?

Answer:

As I said during my testimony, the Department would support an independent grant of authority to the Secretary of State to be able to cut off a contract where it is determined that money is going to terrorists. The Department has preliminary comments on S. 675, and would be glad to discuss the bill and our comments with the Committee.

**Questions for the Record Submitted to
Under Secretary Patrick Kennedy by
Senator Claire McCaskill (7)
Senate Committee on Homeland Security and Governmental Affairs
July 16, 2013**

Question:

In a prior meeting between Under Secretary Kennedy and Senator McCaskill, Under Secretary Kennedy agreed to provide a cost benefit analysis of the use of federal employees versus contractors in State operations. Please provide this cost estimate analysis.

Answer:

The response to this question will be provided under separate cover.

**Questions for the Record Submitted to
Under Secretary Patrick Kennedy by
Senator Kelly Ayotte (1)**
Senate Committee on Homeland Security and Governmental Affairs
July 16, 2013

Question:

Does State have a standardized process for screening all new contracts overseas to ensure our tax dollars are not flowing to our enemies or to those working against our interests?

Answer:

New contracts are subject to normal responsibility determinations that require contracting officers to check the System for Award Management (SAM) to identify if vendors are excluded from government contracting due to debarment or suspension. Contracts in Afghanistan and five pilot countries -- Philippines; Guatemala; Kenya; Lebanon; and Ukraine -- are subject to special vetting procedures that include reviewing pertinent public sources, unclassified and classified U.S. Government databases and verification that vendors are not listed by Department of Defense as supporting terrorists.

**Questions for the Record Submitted to
Under Secretary Patrick Kennedy by
Senator Kelly Ayotte (2)**
Senate Committee on Homeland Security and Governmental Affairs
July 16, 2013

Question:

Does State have a standardized process for screening existing contracts overseas to ensure our tax dollars are not flowing to our enemies or to those working against our interests?

Answer:

The Department of State follows current government-wide practice which is not to screen existing contracts once the contract has been awarded. Vendors who have been subject to screening as part of the Department's Afghan vetting or five country vetting pilot programs are subject to rescreening if they change principal officers during contract performance.

**Questions for the Record Submitted to
Under Secretary Patrick Kennedy by
Senator Kelly Ayotte (3)
Senate Committee on Homeland Security and Governmental Affairs
July 16, 2013**

Question:

Does State require prime contractors to identify which sub-contractors they will work with or are working with? Does State make an attempt to confirm this information?

Answer:

Specific programs such as guard services, construction, logistics support, and others require contractors to identify subcontractors in their proposals. Contractor team composition is the subject of proposal evaluation prior to contract award. State complies with Federal Acquisition Regulation (FAR) requirements which do not require buying offices to confirm subcontractor participation independent of prime contractor submissions. Prime contractors submitting false information regarding subcontractors would be subject to false statements penalties, potential voiding of the contract award, and debarment or suspension.

**Questions for the Record Submitted to
Under Secretary Patrick Kennedy by
Senator Kelly Ayotte (4)
Senate Committee on Homeland Security and Governmental Affairs
July 16, 2013**

Question:

If not, how do you know our money is not flowing to our enemies?

Answer:

The Department of State vets key individuals, contractors and grantees in projects that have been analyzed as high risk in Afghanistan to ensure money is not flowing to our enemies.

**Questions for the Record Submitted to
Under Secretary Patrick Kennedy by
Senator Kelly Ayotte (5)
Senate Committee on Homeland Security and Governmental Affairs
July 16, 2013**

Question:

If yes, do your acquisition officials compare the names of these sub-contractors with information from intelligence databases to ensure they have not engaged in past waste, fraud, and abuse and that they are not diverting money to our enemies?

Answer:

In Afghanistan, allegations that contractors or subcontractors are engaging in waste, fraud and abuse would be referred to either the Department of State Inspector General or the Special Inspector General for Afghanistan Reconstruction (SIGAR) for investigation. If verified, those offices would refer the matter to the contracting officer for potential default termination and/or to the Suspension and Debarment Official (SDO) for suspension and/or debarment action. Key individuals, contractors and grantees are subject to special vetting procedures. These individuals and organizations are validated against various classified and unclassified databases, and other databases to ensure they are not diverting money. The individuals and organizations are also compared to the list of vendors created by the Department of Defense as supporting the insurgency. Subcontractors are

also compared to the list of vendors supporting the enemy created by the Department of Defense and other databases to ensure they are not diverting money.

**Questions for the Record Submitted to
Under Secretary Patrick Kennedy by
Senator Kelly Ayotte (6)
Senate Committee on Homeland Security and Governmental Affairs
July 16, 2013**

Question:

What intelligence databases do State acquisition officials reference to make their determinations?

Answer:

Department officials have access to and reference databases at the Department of State, the National Counterterrorism Center, and the Central Intelligence Agency.

**Questions for the Record Submitted to
Under Secretary Patrick Kennedy by
Senator Kelly Ayotte (7)
Senate Committee on Homeland Security and Governmental Affairs
July 16, 2013**

Question:

Do your acquisition officials reference the Federal Awardee Performance and Integrity Information System (FAPIIS) before putting out a new contract?

Answer:

Yes.

**Questions for the Record Submitted to
Under Secretary Patrick Kennedy by
Senator Kelly Ayotte (8)
Senate Committee on Homeland Security and Governmental Affairs
July 16, 2013**

Question:

If State discovers that an existing contractor or sub-contractor has engaged in or is engaging in waste, fraud, and abuse or is diverting our tax dollars to our enemies (e.g. diverting money to an improvised explosive device manufacturer or facilitator), what authorities does State currently have to quickly terminate an existing contract without paying an equitable adjustment?

Answer:

In Afghanistan, allegations that contractors or subcontractors are engaging in waste, fraud and abuse would be referred to either the Department of State Inspector General or the Special Inspector General for Afghanistan Reconstruction (SIGAR) for investigation. If verified, those offices would refer the matter to the contracting officer for potential default termination and/or to the Suspension and Debarment Official (SDO) for suspension and/or debarment action.

The Department of State has the authority to void a contract if it was obtained as a result of fraud. Fraud, waste, or abuse during the performance of a

contract could be grounds for a termination for default depending on the specific circumstances.

The Department of State has the authority to immediately terminate any contract for convenience. Termination costs on a convenience termination are negotiated between the parties and are subject to a final decision by the contracting officer on the reasonableness of the settlement.

As I stated in my testimony, the Department of State would welcome additional authority to terminate any contract, regardless of the nationality of the vendor, for default for supporting enemies of the United States.

**Questions for the Record Submitted to
Under Secretary Patrick Kennedy by
Senator Kelly Ayotte (9)
Senate Committee on Homeland Security and Governmental Affairs
July 16, 2013**

Question:

What clause in the Federal Acquisition Regulation allows you to terminate the contract and not pay equitable adjustment?

Answer:

The Federal Acquisition Regulation (FAR) has various termination clauses depending on the type of contract (i.e., fixed price, time and materials, cost reimbursement). Each of these clauses provides for a termination for default or cause for failure to perform. Fraud in contract performance could constitute a cause for default depending on circumstances.

The Department of State has the authority to immediately terminate any contract for convenience. Termination costs on a convenience termination are negotiated between the parties and are subject to a final decision by the contracting officer on the reasonableness of the settlement.

As I stated in my testimony, the Department of State would welcome additional authority to terminate any contracts, regardless of the nationality of the vendor, for default for supporting enemies of the United States.

**Questions for the Record Submitted to
Under Secretary Patrick Kennedy by
Senator Kelly Ayotte (10)
Senate Committee on Homeland Security and Governmental Affairs
July 16, 2013**

Question:

Will State please provide a formal review of S. 675 – The Never Contract with the Enemy Act? If State has any objections to the legislation, please provide recommended revised language that would extend the FY12 NDAA Section 841 and 842 authorities to State – making the appropriate adjustments to reflect the unique nature of State contracting.

Answer:

As I stated during my testimony, the Department would support an independent grant of authority to the Secretary of State to be able to cut off a contract where it is determined that money is going to terrorists. The Department has preliminary comments on S. 675, and would be glad to discuss the bill and our comments with the Committee.

**Questions for the Record Submitted to
Under Secretary Patrick Kennedy by
Senator Tom Coburn (1)
Senate Committee on Homeland Security and Governmental Affairs
July 16, 2013**

Question:

In a SIGAR report released this May, auditors found that DOD, State and USAID had reimbursed contractors for what are likely illegitimate Afghan tax expenditures—the report specifically notes one contractor who reported being reimbursed by State more than \$230,000 in tax assessments, and a total of \$19,095,672 in assessments on State Department contractors. What is the total amount the Department of State has reimbursed to contractors for Afghan taxes paid? Of that total, how much was incorrectly reimbursed? How much has the Department of State recovered to date from funds that were incorrectly reimbursed to contractors for illegitimate tax expenditures?

Answer:

SIGAR identified four contracts awarded to Afghan-owned prime contractors as the source of their unauthorized tax reimbursement statement. The Department's Office of the Legal Adviser determined that the Letter of Agreement (LOA) cited by SIGAR in their report only exempts imported commodities from taxation when the prime contractor is Afghan. Payroll taxes and taxes on supplies/services procured inside Afghanistan are taxable. This greatly complicates determining if any illegitimate taxes were paid. State continues to audit the tax payments to determine if any were improperly reimbursed. No funds have been recovered to date.

**Questions for the Record Submitted to
Under Secretary Patrick Kennedy by
Senator Tom Coburn (2)
Senate Committee on Homeland Security and Governmental Affairs
July 16, 2013**

Question:

If our goal is to eventually leave Afghanistan a stable country, capable of its own governance to the greatest extent possible, how does paying taxes for Afghans help accomplish that goal? Does it work counterproductive to our need to establish a *culture* of rule of law when we don't hold Afghan companies accountable for basic responsibilities, such as paying taxes? Was this point ever discussed during the deliberations over whether or not these taxes could or should be reimbursed?

Answer:

The United States remains committed to its primary goal in Afghanistan to defeat and dismantle Al Qaeda and ensure Afghanistan never again serves as a safe haven for terrorists to plan attacks on the United States or our allies. We signed a strategic partnership agreement with Afghanistan last year to support our overall policy goals, including through the continued development of Afghanistan's government capacity and economy.

We work closely with our counterparts in the Afghan Government and with contractors and Non-Governmental Organizations implementing our assistance and other operations in Afghanistan to ensure all assistance programs are exempt from

Afghan taxes and that taxes on non-exempt activities are levied fairly and transparently. The U.S. Embassy, U.S. Forces Afghanistan, and International Security Assistance Force work closely together to resolve instances in which contractors complain of improper taxation, and to engage with the Afghan government to ensure that Afghan officials share our view of the scope of relevant tax exemptions. The U.S. Embassy in Kabul has engaged the Ministry of Finance regarding its taxation of foreign contractors generally, urging the Ministry to re-examine the issue of linking tax payments to the renewal of business licenses and visas where there are legitimate concerns surrounding tax invoices and good faith efforts by companies to pay undisputed amounts.

We recognize and support the Afghan Government's need to collect revenues through proper taxation of national and foreign entities operating within its borders. However, as we do worldwide and consistent with U.S. law and policy, we seek exemption from host nation taxation for all foreign assistance. We have a series of agreements with the Afghan Government in place providing exemptions, and we take seriously any alleged taxation that would violate those agreements.

**Questions for the Record Submitted to
Under Secretary Patrick Kennedy by
Senator Tom Coburn (3)
Senate Committee on Homeland Security and Governmental Affairs
July 16, 2013**

Question:

Please provide a complete account of all State Department administered projects to date, in both Iraq and Afghanistan, for which funding and support (both State Department staff and contractor) have been stopped, including the total project cost, the stage at which each project was stopped, the total amount expended at the time the project was stopped, and the total amount saved.

Answer:

No Department of State contracts, projects or programs have been stopped in either Iraq or Afghanistan because of the NDAA 2013 wartime contracting reforms signed into law in January 2013.

Post-Hearing Questions for the Record
Submitted to Aman Djahanbani
From Senator Claire McCaskill
QFR#1
“Implementation of Wartime Contracting Reforms”
July 16, 2013

Question:

The 2013 National Defense Authorization Act (NDAA) wartime contracting reforms instituted significant organizational, procedural and reporting changes for the United States Agency for International Development (USAID), including mandating risk assessments. An overriding purpose of these reforms was to prevent USAID from entering contracts that would have harmed American interests or wasted American tax dollars. What specific USAID contract, project or program was successfully stopped because of NDAA wartime contracting reforms?

Answer:

Over the last several years, the U.S. Agency for International Development has undertaken many reforms at both the Agency and mission level to improve the acquisition and assistance processes in contingency operations that are in keeping with the intention of the reforms mandated by the 2013 National Defense Authorization Act (NDAA) reforms. USAID's work in Afghanistan is a prime example of how USAID reforms are working to prevent USAID from entering contracts that would have harmed American interests or wasted American tax dollars. These proactive Agency reforms include the Accountable Assistance for Afghanistan (A3) initiative launched in 2011, which increased the number of locally incurred cost audits, vetting of non-American organizations and key personnel, and limited the number of subtier in contracts to ensure greater accountability. In addition, USAID issued the Sustainability Guidance for Afghanistan in June 2011 to ensure that USAID programs in Afghanistan are increasingly sustainable and closely aligned with Afghan priorities. Under the Sustainability Guidance, every USAID program in Afghanistan must, to the extent possible, contribute to three areas: (1) Afghan ownership and capacity, (2) increased stability and confidence in the Afghan Government, and (3) program and cost effectiveness. Therefore, USAID has incorporated a sustainability analysis into its project design process. As part of this analysis, every project must now have a sustainability plan.

With sustainability in mind, USAID is making shifts in our portfolio. We are moving away from new infrastructure projects, and, instead, focusing on operations and maintenance of existing investments. Projects that do not seem sustainable, or for which, in consultation with Government of the Islamic Republic of Afghanistan (GIRoA), we realize that there is no realistic Afghan commitment to future support, we modify, end, or postpone.

Since the enactment of FY13 NDAA, USAID continues to incorporate the NDAA reforms into the acquisition and assistance process. Due to all of the changes that have been

made in recent years, USAID cannot say definitively that any programs have been stopped solely due to FY13 NDAA reforms. However, USAID has stopped or modified projects due to either risk assessment analyses or sustainability concerns prior to the passage of the FY13 NDAA reforms.

An example of a program that has been stopped by USAID in Afghanistan is the Strategic Provincial Roads program (SPR). SPR was a cooperative agreement that began in 2007 to build roads in underserved areas of Afghanistan's restive south and east, while boosting the capacity of the Afghan construction sector and engaging long-alienated communities in the process. In 2010, an internal review of the project was ordered, revealing that the program was not producing the results we expected. In response, USAID ended the project, saving the American taxpayers \$230 million. Further, following this project, USAID has changed our policies regarding construction. USAID no longer contracts for construction through grants or cooperative agreements, and additionally, USAID now requires contracts that give the agency greater control over the implementation on all construction matters.

USAID continues to look at opportunities to leverage existing investments and modify programs to ensure sustainable results. An example of a project that was modified as a result of consultations with the Government of Afghanistan through biannually-held portfolio reviews is:

- **Strengthening Afghan Agricultural Facilities (SAAF) program:** The goal of the original five-year, \$31.9 million SAAF program was to reinvigorate and modernize the faculties of agriculture at five higher-education institutions in Afghanistan. The plan was to upgrade these faculties through improved teaching, modernized agricultural science curricula, basic renovation and management of necessary infrastructure, and provision of books and equipment for libraries, laboratories, and demonstration farms.

As part of USAID's review processes, USAID consulted with GIRQA and determined the SAAF program duplicated ongoing programs by another international donor. As a result, USAID decided to de-scope the SAAF program from a five-year, \$31.9 million program to a five-year, \$7.8 million program focused specifically on improving the capacity of Afghan faculty and staff through advanced degree training.

In light of the important security, political, and economic transitions taking place in Afghanistan in 2014, USAID's work in Afghanistan will continue to focus on assessing and mitigating risk, as well as sustainability to ensure the resilience needed to effectively deal with upcoming challenges. This focus includes making decisions about modifying, ending or postponing projects that present significant, unmitigated risk or do not fit the sustainability criteria established by USAID or for which there is no realistic Afghan commitment to future support.

Post-Hearing Questions for the Record
Submitted to Aman Djahanbani
From Senator Claire McCaskill
QFR#2

“Implementation of Wartime Contracting Reforms”
July 16, 2013

Question:

NDAA Section 844 demands increased information and accuracy regarding contracts and contractor personnel in contingency operations. In order to determine the progress of USAID's data collection and reporting, please provide the following information for July 16, 2013 (or indicate that USAID does not yet have the capability of either collecting or generating the information).

- What is the total number of contracts that USAID has entered into in Afghanistan?

Answer:

Value of USAID Awards in Afghanistan Since 2002

Acquisition Awards		
Award Type	Number of Awards	Total Estimated Cost
Contract	80	\$ 4,203,753,528.89
Task Order	89	\$ 2,972,581,943.46
Purchase Order	49	\$ 28,236,639.27
BPA/Call Order	53	\$ 1,800,417.38
Interagency Agreement	35	\$ 243,497,731.82
Sub-total	271	\$ 7,449,870,260.82
Assistance Awards		
Award Type	Number of Awards	Total Estimated Cost
Cooperative Agreement	103	\$ 3,824,027,164.50
Grant	57	\$ 3,208,259,331.04
Leader with Associates	1	\$ 129,497,592.00
Sub-total	161	\$ 7,161,784,087.54
GRAND TOTAL	467	\$ 14,611,654,348.36

Question:

What is the total number of contractor personnel that USAID has in Afghanistan?

Answer:

The number of contractor personnel working under USAID programs on a full time basis often fluctuates with time and as programs start up, close out, and downsize. Based on USAID's latest data call of active awards from June 2013, there are approximately 6,500 program staff working under USAID programs on a fulltime basis. This excludes temporary hires or day laborers, but

may include subcontractors who work on a program full-time. Of the program staff identified in the data call, approximately 325 are American citizens, 325 are third country nationals, and 5,850 are local nationals.

Question:

What is the total number of security personnel that USAID has in Afghanistan?

Answer:

USAID has no personnel in country providing security, and we do not contract with any security entities directly. Similarly to the number of contracting personnel, the number of security personnel working under USAID programs fluctuates as programs scale up or down, start up or close down. Based on the same June 2013 data call of active awards referenced above, USAID's partners have a total of about 275 expatriate Risk Management Consultants (RMCs) in Afghanistan providing fulltime risk management services as subcontractors for USAID-funded programs (grants and contracts). In addition to these RMCs, there are about 1,850 Afghan Public Protection Force guards (Afghans) working for USAID partners under subcontracts around the country. Finally, there are about 700 unarmed local nationals performing work under RMCs, which includes functions such as drivers, translators, access control, vehicle searches, manning operations centers, etc.

Question:

What is the total number of USAID contractor casualties in Afghanistan?

Answer:

The table below identifies USAID Monthly Partner Report Casualties and Incidents in calendar year 2003 to the present. It should be noted that these numbers are reported from the Afghanistan Mission and Office of Afghanistan Pakistan Affairs (OAPA) and include the following:

- Death or injury of anyone while working for the program (e.g. a day laborer or temporary employee if the death occurred while working under a USAID-funded program)
- Death or injury of subcontractors employed fulltime by the program (e.g. an APPF guard)
- Death or injury due to natural causes or accidents if the person was employed fulltime by the program at the time - even if it occurred while off duty

An analysis into the cause of fatalities conducted in December 2011 found that about 50% were specifically stated to be security staff. The number of casualties has decreased substantially after peaking in the 2009-2010 time period.

USAID Monthly Partner Reported Casualties & Incidents in Calendar Year 2003 to Present						
(Prior to Aug 2009 incidents were reported to multiple sources and may be incomplete)						
Reporting Years	Fatalities	Monthly Average	Injuries	Monthly Average	Reported Incidents	Monthly Avg. Incidents
Total CY 2003	8		5		8	
Total CY 2004	9		11	1	13	1
Total CY 2005	23	2	50	4	38	3
Total CY 2006	58	5	66	6	52	4
Total CY 2007	41	3	55	5	25	2
Total CY 2008	20	2	36	3	32	3
Total CY 2009	101	8	182	15	339	28
Total CY 2010	100	8	213	18	688	57
Total CY 2011	41	3	85	7	404	34
Total CY 2012	23	2	25	2	133	11
Total CY 2013, through 15 Aug	5	1	31	4	146	18
Total	429		759		1878	

Post-Hearing Questions for the Record
Submitted to Aman Djahanbani
From Senator Claire McCaskill
QFR#3

“Implementation of Wartime Contracting Reforms”
July 16, 2013

Question:

One of the major concerns in wartime contracting has been the numbers of contractors who overrun budgets, fall behind schedule, or fail to fulfill their promised performance—and yet are awarded new contracts for different projects. Recently, in an effort to help solve this problem, the Office of Management and Budget announced a goal of 100% reporting by 2015. What is your current level of past performance reporting?

Answer:

As of October 9, 2013, the past performance reporting for USAID/Afghanistan is 82%.

As of November 19, 2013, the past performance reporting for USAID Agency-wide is 34.36%.

Post-Hearing Questions for the Record
Submitted to Aman Djahanbani
From Senator Claire McCaskill
QFR#4

“Implementation of Wartime Contracting Reforms”
July 16, 2013

Question:

USAID drafted a contract proposal for a “Remote Monitoring Project,” under which a contractor, rather than USAID staff, would monitor some of its projects in dangerous environments in Afghanistan. The contract allows for cost plus fixed fee task orders.

- Why are cost plus fixed fee task orders an option in the proposal, given how risky these are to the government?

Answer:

The “Remote Monitoring Project,” which is now referred to as the “Monitoring Support Project (MSP),” is part of a broader, multi-tiered USAID approach to monitoring in Afghanistan that utilizes a variety of methodologies including time-, date-, and GPS-stamped photos; beneficiary interviews; site visits; and independent assessments of third parties, and relies on data from multiple sources, including USAID project beneficiaries, civil society organizations, other donor agencies, and monitors hired through the MSP.

USAID uses a variety of award mechanisms, selecting a type appropriate to accomplish the requirement stated in the Statement of Work, and considering the risks of the environment where the work will be performed. Pursuant to the Federal Acquisition Regulation (FAR 16.103), the overall objective of the government is to negotiate a contract type and price that will best help achieve the intended results and will provide the contractor with the greatest incentive for efficient and economical performance. Thus, the contract type must be a reasonable business arrangement, which allows for risk mitigation in order to gain successful contract performance at a fair and reasonable price, which is the ultimate goal of the U.S. Government.

For example, firm-fixed-price (FFP) contracts, which best utilize the basic profit motive of business enterprise, are appropriate only when the performance risk involved is minimal or influencing factors on performance and cost can be predicted with an acceptable degree of certainty. If a reasonable expectation for predictability does not exist, and in accordance with federal regulations, the Contracting Officer must consider other contract types and negotiate toward one that ties to the greatest extent possible profit to contractor performance. According to the FAR, when external circumstances and/or environmental factors (which are commonly encountered in development work) can potentially prevent an Agency from sufficiently defining its requirements or costs, other types of contracts should be considered including cost-

reimbursement types of contracts. For example, Cost-Plus-Fixed-Fee Completion contracts/task orders (as contemplated under the Monitoring Support IQC) would allow for payment of contractor fee or profit, if certain deliverables of performance have been met. This contract structure holds the contractor accountable for results and value, while also recognizing the financial risks that operating in an environment like Afghanistan entails.

Question:

Why is MSI Worldwide, a Washington DC-based contractor, already hiring for the Remote Monitoring Project even though the contract is still in draft form?

Answer:

USAID released a draft Request for Proposals (RFP) for the Remote Monitoring Project (now referred to as the Monitoring Support Project) on May 24, 2013, with the intent of gathering questions, comments, and feedback from potentially interested bidders. Experienced companies, such as MSI Worldwide, will usually begin recruitment of key personnel positions as early as possible, as a way to strengthen their overall proposals, which still have to respond to the final RFP and not the draft. Any such recruitment activities are the sole action of potential bidders, and all of these recruitment notices clearly state that positions are subject to project award.

A quick review of the job listings on www.DevEx.com (search for the words “subject to award”) demonstrates how this recruitment and proposal development strategy plays out for many companies. Companies often use this approach for any project bidding opportunities, not just those for USAID.

Question:

Why does the contract ask for a monthly “success story” to be submitted to USAID?

Answer:

One component of the project is documenting and sharing both the successes and challenges of conducting project verification and monitoring in a context such as Afghanistan. Consequently, this component would be focused primarily on documenting how the different verification and monitoring methods can be improved and refined over time. This documentation is in addition to the normal and routine reporting of project verification and monitoring activities, which is the primary focus of the project.

Question:

As the draft contract indicates, one method the Remote Monitoring Project will use to oversee its projects is “crowd sourcing.” How will this method work given most Afghans’ lack of access to technology?

Answer:

It is important to note that crowd sourcing will be used as a verification and monitoring method only when and where it makes sense to do so. This guidance also holds true for all of the other methods listed in the draft RFP, as well as for any other methods proposed by bidders, pursuant to the final RFP. The overall monitoring approach will be customized to the constraints and opportunities of each individual project.

USAID feels that crowd sourcing is a compelling method for this project based on the following information:

Cellphone Ownership

The growth of mobile telephony has outpaced all other forms of infrastructure and emerged as the largest source of foreign direct investment in the country, the greatest remitter of taxes to the government, and the largest non-governmental employer of Afghans outside of subsistence agriculture. Mobile phone costs in Afghanistan have dropped dramatically in the past decade. The average Afghan makes US\$542 per year. When mobile phones were first introduced to the Afghan market, one SIM card and a mobile handset together cost US\$300. Today, a SIM card costs roughly US\$1 and a previously owned handset can be purchased for around US\$10. Similarly, the cost of airtime has fallen to just one-sixth the price of 2003 levels when one minute cost US\$0.36 to US\$0.06 per minute in 2012.¹ The combined effect of the foreign direct investment from the private sector, a relatively good business environment, and diminishing barriers to entry for consumers is an industry with more than 18 million mobile subscriptions spread among a population of roughly 30 million persons (including a significant proportion of both youth and women) and a cellphone network that covers 88% of the population.²

Reliability of Crowd Sourcing

USAID is examining the viability of crowd sourcing methods through a Teacher Payment Monitoring assessment with a heavy emphasis on the usage of mobile phones. To date (three months in), the effort has been able to solicit interaction from nearly 5,000 unique cellphone subscribers via SMS text messaging and nearly 1,600 unique individuals via calls. The assessment uses radio, print, community engagement, and follow-up phone calls in Kabul, Nangarhar, Kumar, Laghman, and Herat. A crowd sourcing experiment focused on recursive vetting of respondents reached a 90% reporting accuracy in the first round of solicitations for pre-planted 'truth anchors' (posters placed by the team with codes and known locations). By the final round a targeted group of 18 respondents were able to independently and accurately identify six different targets with multiple hits per location.

Additional Cellular Price Data

New handsets range from 1,500 to 2,500 Afghanis (AFS) (US\$29 to \$48) for basic feature phones and 10,000 to 30,000 AFS (US\$190 to \$570) for smartphones. Second-hand basic

¹ USAID Report, "Connecting to Opportunity: A Survey of Afghan Women's Access to Mobile Technology". http://www.usaid.gov/sites/default/files/documents/1871/survey_afghan_women_mobile.pdf

² Data collected by the ISAF telecommunications advisory team from the Afghan Ministry of Communications and Information Technology and telecommunications providers.

handsets cost about US\$10. SIM cards range from 50 to 100 AFS (US\$1 to \$1.90). Pre-paid voice service ranges from 1 to 5.5 AFS (US\$0.01 to \$0.10) per minute for phone calls. In Afghanistan, the person who initiates the phone call pays, not the recipient. Pre-paid SMS service ranges from 0.50 to 2.5 AFS (US\$0.01 to \$0.5) per text message.³

³ USAID Report, "Connecting to Opportunity: A Survey of Afghan Women's Access to Mobile Technology.
http://www.usaid.gov/sites/default/files/documents/1871/survey_afghan_women_mobile.pdf

Post-Hearing Questions for the Record
Submitted to Aman Djahanbani
From Senator Claire McCaskill
QFR#5

“Implementation of Wartime Contracting Reforms”
July 16, 2013

Question:

The Special Inspector General for Afghanistan Reconstruction (SIGAR) recently questioned more than \$13 million in costs in an audit of a USAID contract with Chemonics. The SIGAR also stated that Chemonics refused to cooperate with the government.

- Who at USAID is responsible for ensuring that contractors cooperate with government audits, and why was that cooperation not secured for this audit?

Answer:

Contractors are required to adhere to the Federal Acquisition Regulations (FAR) clauses and/or agency supplemental clauses, as contained in their respective contracts. Clauses which allow examination of records and/or audit rights are routinely included. Failure to comply with the applicable contract clauses may necessitate a variety of actions taken by the Contracting Officer on the Agency's behalf, such as withholding of funds; failure to exercise an option to extend the term of the contract or to increase quantity; termination; or a negative Contractor Performance Assessment Report (CPAR). A contractor that refuses to cooperate with federal auditors also may be referred to the Compliance Division for appropriate action, as the circumstances warrant.

With regard to the Chemonics audit, it is unclear when the Agency was made aware of the complications between SIGAR and Chemonics. The Agency was officially notified of the issues by SIGAR on July 2, 2013, after the audit concluded.

Upon learning of SIGAR's assertion of non-cooperation, USAID immediately reached out to both Chemonics and SIGAR for additional information. Based on the information received and documents reviewed, it has not been established by the Agency that the contractor refused to cooperate with SIGAR. Instead, it appears that a miscommunication occurred between the parties which led to misunderstandings. USAID has met with representatives from Chemonics' management and reiterated to them their responsibility to respond timely and appropriately to government auditors.

- What actions are being taken against the contractor?

Answer:

USAID has met with key officials at SIGAR and senior management at Chemonics to discuss this issue, and based on the information and documents available to USAID, it has not been demonstrated to the Agency that Chemonics failed to cooperate with the SIGAR auditors. Subsequent to USAID's receipt of the audit report and following initial meetings with representations from both organizations, the Agency made a request to SIGAR for any additional documentation supporting the claim that Chemonics refused to cooperate. However, SIGAR declined to provide any additional information or documentation in support of the claim citing an ongoing investigation. Without additional information from SIGAR relating to the alleged failure to cooperate, USAID considers the lack of cooperation issue resolved.

The Agency has reiterated to Chemonics their responsibility to respond timely and appropriately to government auditors. Chemonics concurred with the Agency's position that the SIGAR audit should have been handled by subject matter experts who had a direct line of communication and support from senior management. Chemonics has since pledged full cooperation in any further inquiries into the issues raised by the audit and has agreed to supply the resources in staff numbers and requisite skills sets with a direct line of communication to senior management for future audits.

The Agency is committed to ensuring full cooperation and the safeguarding of taxpayer funds now and in the future. However, the \$13 million questioned by the SIGAR audit appears to be supported by documentation such as Chemonics' negotiation memoranda, sole source justifications, and Contracting Officer consent to subcontract. USAID/Aghanistan is further reviewing the specific negative findings in the audit report and will take action as necessary.

- Will this refusal to cooperate be noted in the Chemonics' performance evaluation?

Answer:

It has not been established that Chemonics did not cooperate with the auditors. Moreover, the \$13 million questioned by the SIGAR audit appears to be supported by documentation such as Chemonics' negotiation memoranda, sole source justifications, and Contracting Officer consent to subcontract. USAID/Aghanistan is further reviewing the specific negative findings in the audit report and if any of the negative findings are validated, the Agency will review the available remedies, which may include reporting of this information in the Contractor Assessment Performance Reporting System (CPARS).

Post-Hearing Questions for the Record
Submitted to Aman Djahanbani
From Senator Claire McCaskill
QFR#6

“Implementation of Wartime Contracting Reforms”
July 16, 2013

Question:

Over the last decade, USAID has devoted significant resources to poppy eradication in Afghanistan. What is the total amount that USAID has spent on poppy eradication efforts in Afghanistan?

Answer:

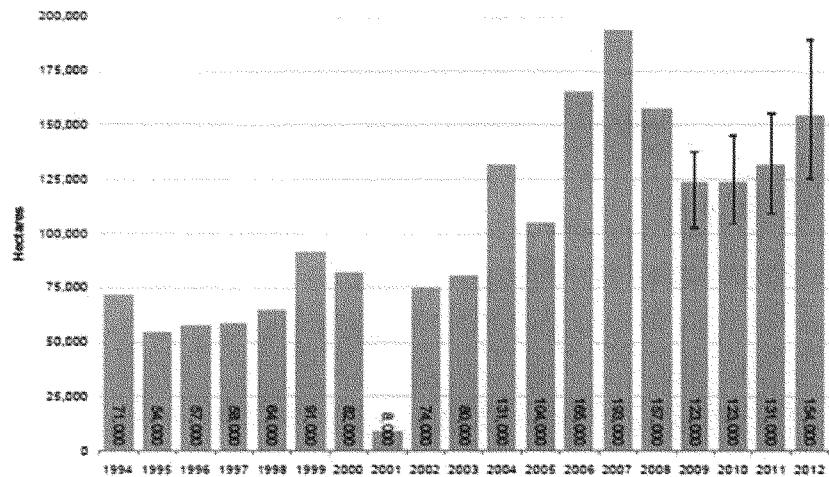
It is important to note that USAID does not engage in poppy 'eradication', but we do contribute to a holistic approach to poppy reduction by providing alternative development. USAID's alternative development work is part of a whole-of-government effort that includes the State Department's Bureau of International Narcotics and Law Enforcement (INL), which has historically managed opium-poppy eradication programs. In addition to USAID's alternative development efforts, the U.S. Government counternarcotics portfolio includes Afghan government capacity building, demand reduction, interdiction, public information, and regional cooperation. Between FY 2002 and FY 2012, USAID's total appropriations for alternative development equaled \$1.32 billion.

Question:

By what percentage has poppy farming declined in Afghanistan since USAID began its eradication efforts?

Answer:

Opium poppy cultivation has varied significantly between 2002 and 2012 based on many factors including global wheat and opium prices, and ongoing security challenges in some provinces. The U.S. Government's goal is sustainable reductions over the long-term, and we remain committed to working closely with the Afghan government, regional partners, and the international community to reduce the flow of Afghan narcotics and eliminate this key funding source to the insurgency. Presented below is a graph by the UN Office of Drugs and Crime (UNODC) on poppy cultivation in Afghanistan:



Sources: UNODC and UNODC/MCN opium surveys 1994-2012. The high-low lines represent the upper and lower bounds of the 95% confidence interval.

**Post-Hearing Questions for the Record
Submitted to Mr. Aman Djahanbani
From Senator Kelly Ayotte
QFR#1**

**Implementation of Wartime Contracting Reforms
July 16, 2013**

Question:

Does USAID have a standardized process for screening all new contracts overseas to ensure our tax dollars are not flowing to our enemies or to those working against our interests?

Answer:

Consistent with Executive Order 13224, terrorist sanctions regulations administered by the Office of Foreign Assets Control (OFAC) within the U.S. Department of Treasury; the material support criminal statutes found at 18 U.S.C. 2339A, 2339B, and 2339C; and other related Executive Orders, statutes and Executive Branch policy directives, USAID has over the years taken a number of steps, when implementing the U.S. foreign assistance program, to minimize the risk that agency funds and other resources might inadvertently benefit individuals or entities that are terrorists, supporters of terrorists, or affiliated with terrorists.

Specifically, USAID requires inclusion of clauses in its solicitations, contracts, grants, cooperative agreements and other comparable documents which remind the Agency's contractor and grantee partners of U.S. Executive Orders and U.S. laws prohibiting transactions with, and the provision of support and resources to, individuals and organizations associated with terrorism.

USAID also requires terrorist financing certifications from all U.S. and non-U.S. non-governmental organizations seeking funding from USAID under grants and cooperative agreements. In addition, during contract award for all USAID contracts, contracting officers are required to check the OFAC and Specially Designated Nationals (SDN) lists and are prohibited from awarding to persons or organizations appearing on either.

However, given the range of activities carried out by USAID and the range of circumstances under which they are implemented, additional procedures may be warranted to ensure appropriate due diligence. In such instances, checking the names and other personal identifying information of key individuals of contractors and grantees, and sub-recipients, against public and non-public databases is an appropriate higher level safeguard. Accordingly, in certain high risk countries, such as Afghanistan, USAID has determined that such vetting is warranted to protect U.S. taxpayer dollars.

In May 2011, USAID/Afghanistan by Mission Order instituted partner vetting as part of the Accountable Assistance for Afghanistan (A3) initiative in an effort to prevent inadvertent support of malign actors in Afghanistan. All of USAID's current implementing partners in Afghanistan, for over 80 awards, are complying with the program as it is currently defined in the

applicable Mission Orders and must continue to do so to remain in compliance with their agreements with USAID.

Specifically, USAID/Afghanistan's Mission Orders 201.03 and 201.05 set out policies and procedures for screening (vetting) potential award recipients that include the following criteria:

- Third-country and local Afghan companies and key individuals
- Awards and sub-awards over \$25,000
- Awards and sub-awards for private security contracts (PSC) and risk management companies (RMC) regardless of the awards' dollar value and regardless of tier.
- U.S. persons and U.S. companies are not required to be vetted

Vetting must be conducted, when applicable, before signing of award or consent to sub-award is issued. The vetting process commences when the prime awardee certifies, signs and submits a completed USAID Information Form for itself and/or sub-awardee to the mission's Vetting Support Unit (VSU). Prime contractors and grantees are responsible for performing due diligence for sub-awardees. Vetting is then performed by USAID's Office of Security in Washington, D.C. (SEC) through searches of public and non-public databases for derogatory information. Based on the database review, SEC prepares an eligibility/ineligibility recommendation for the mission.

If an awardee is deemed eligible and receives an award, the approval generally will remain in effect for that particular award for one year. However, new vetting is required if there is any change in the awardee's "Key Individuals." Further, USAID reserves the right to vet or re-vet any organization or non-U.S. individual awarded or competing for award at any time, regardless of previous vetting date. Vetting approval may be rescinded if USAID obtains information indicating that the awardee or any of its "Key Individuals" is found to be a Prohibited Party as defined by Mission Order. Each awardee must be vetted for each new award that exceeds the Vetting Threshold (\$25,000), and at least annually for the duration of an Award. The mission also reserves the right to vet for new awards below the threshold. If USAID receives information or becomes aware of any practice or conduct of a sub-awardee that could be grounds for termination, that information is passed directly to the USAID prime awardee for action under relevant contract clauses. In addition, the VSU will notify appropriate officials in USAID/Washington when an entity is determined ineligible and will provide the Suspension and Debarment Official with any relevant information.

In Afghanistan to date, more than 2,000 vetting requests have been completed since May 2011 resulting in the prevention of over \$33 million worth of awards and sub-awards being made to organizations determined to be ineligible. The vetting process has worked effectively to safeguard U.S. taxpayer funds.

Separate from programs in certain high-threat areas for which vetting is currently conducted, USAID and the Department of State (State) are conducting a joint Partner Vetting System (PVS) pilot program pursuant to the Congressional mandate in relevant Appropriations Acts, including P.L. 112-74, Section 7034(i). State and USAID are conducting the pilot in the following countries: Lebanon, Kenya, Guatemala, Philippines and Ukraine. The countries selected for the

pilot represent a range of terrorist threat risks, reflect geographic diversity, and are located where both agencies have comparable programs.

Following the conclusion of the pilot program, the agencies are required to report to the Committees on Appropriations regarding the estimated timeline and criteria for evaluating the PVS for expansion.

**Post-Hearing Questions for the Record
Submitted to Mr. Aman Djahanbani
From Senator Kelly Ayotte
QFR#2**

**Implementation of Wartime Contracting Reforms
July 16, 2013**

Question:

Does USAID have a standardized process for screening existing contracts overseas to ensure our tax dollars are not flowing to our enemies or to those working against our interests?

Answer:

In high-threat areas of the world where USAID conducts vetting, it reserves the right to vet or re-vet any organization or non-U.S. individual awarded or competing for award at any time regardless of previous vetting date.

For example, in Afghanistan, in accordance with USAID/Afghanistan's Mission Orders 201.03 and 201.05, each awardee must be vetted every year for the duration of awards. In addition, new vetting will be required if there is any change in the awardee's "Key Individuals." Vetting approval may be rescinded if USAID obtains information indicating that the awardee or any of its "Key Individuals" is found to be a Prohibited Party. Each awardee must be vetted for each new award that exceeds the Vetting Threshold (\$25,000 cumulative).

Post-Hearing Questions for the Record
Submitted to Mr. Aman Djahanbani
From Senator Kelly Ayotte
QFR#3, 4, & 5

Implementation of Wartime Contracting Reforms
July 16, 2013

Question:

Does USAID require prime contractors to identify which sub-contractors they will work with or are working with? Does USAID make an attempt to confirm this information?

If not, how do you know our money is not flowing to our enemies?

If yes, do your acquisition officials compare the names of these sub-contractors with information from intelligence databases to ensure they have not engaged in past waste, fraud, and abuse and that they are not diverting money to our enemies?

Answer:

Contractors and other implementers of USAID programs routinely report instances of fraud or other misconduct by sub-contractors as required by Contractor Code of Business Ethics and Conduct pursuant to FAR 52.203-13(b) and implementers' internal organizational policies. USAID's Office of Inspector General (OIG), Contracting Officers (COs) and Compliance Division track these "sub-contractor disclosures" and coordinate the appropriate remedies given the circumstances of the case, including suspension and debarment.

Generally, COs must follow the evaluation for consent to subcontract responsibilities placed on them by FAR 44.202-2(13), which requires COs to review whether the proposed sub-contractor is in the System for Award Management (SAM) Exclusions. In addition to contractors that are debarred, suspended, and proposed for debarment, SAM Exclusions lists contractors declared ineligible from Government contracting pursuant to statutory, Executive Order, or regulatory authority. Additionally, proposed subcontractors in Afghanistan specifically with subcontracts exceeding \$25,000 are vetted through the mission's vetting system.

With regard to vetting, each of the Mission Orders which establish how vetting is to be conducted in each mission determine the level of sub-contracting or sub-assistance awards. In Afghanistan, for example, this determination is based on a monetary threshold. In the PVS pilot program, the recommendation is vetting at least to the second sub-contracting and sub-assistance award level. USAID currently relies on the prime contractor/ award recipient to identify the "subs" with whom they will be working. USAID makes every effort to ensure the validity of the information provided by the prime and subs, and requests that the prime validate the accuracy of the information they have provided. Implementing partners have requested the use of direct

vetting where USAID would communicate 'directly' with the subs. To date this request has been denied as vetting applies to Afghanistan, however it is being considered under limited circumstances in the PVS pilot program.

**Post-Hearing Questions for the Record
Submitted to Mr. Aman Djahanbani
From Senator Kelly Ayotte
QFR#6**

**Implementation of Wartime Contracting Reforms
July 16, 2013**

Question:

What intelligence databases do USAID acquisition officials reference to make their determinations?

Answer:

During award determination for all USAID awards, contracting officers and agreement officers are required to check the Office of Foreign Assets Control (OFAC) and Specially Designated Nationals (SDN) lists and are prohibited from awarding to persons or organizations appearing on either. Additionally, USAID Office of Security has full access to and has staff detailed to the FBI's Terrorist Screening Center (TSC) who conduct searches of the database resources available at the TSC as part of USAID's vetting process. The TSC aggregates intelligence from the various USG intelligence agencies and USG agencies may access this information as it pertains to their mission requirements.

Post-Hearing Questions for the Record
Submitted to Mr. Aman Djahanbani
From Senator Kelly Ayotte
QFR#7

Implementation of Wartime Contracting Reforms
July 16, 2013

Question:

Do your acquisition officials reference the Federal Awardee Performance and Integrity Information System (FAPIIS) before putting out a new contract?

Answer:

USAID's contracting officers (COs) follow Federal Acquisition Regulations (FAR) Subsection 9.104-6 which requires them to consider information in the Federal Awardee Performance and Integrity Information System (FAPIIS) and other past performance information when making responsibility determinations for prospective contractors for awards above the simplified acquisition threshold. COs are required to document the contract file to indicate how the information in FAPIIS was considered in any responsibility determination as well as the action that was taken as a result of the information. Requirements for using FAPIIS are reiterated in USAID's Agency policy (Chapter 302 of our Automated Directives System (ADS) on USAID Direct Contracting) and in the Agency's Contract Review Board Pre-Award Guidance/Best Practices.

Post-Hearing Questions for the Record
Submitted to Mr. Aman Djahanbani
From Senator Kelly Ayotte
QFR#8

Implementation of Wartime Contracting Reforms
July 16, 2013

Question:

If USAID discovers that an existing contractor or sub-contractor has engaged in or is engaging in waste, fraud, and abuse or is diverting our tax dollars to our enemies (e.g. diverting money to an improvised explosive device manufacturer or facilitator), what authorities does USAID currently have to quickly terminate an existing contract without paying an equitable adjustment?

Answer:

USAID interprets the Federal Acquisition Regulation (FAR) clauses related to termination under FAR Part 49 as providing the Agency the ability to terminate in whole or in part work performed under contract inclusive of situations involving waste, fraud, and abuse. Similarly, if a contractor or sub-contractor was discovered to be providing taxpayer funds to "prohibited sources" as provided under FAR Subpart 25.7, USAID has the ability to terminate under the remedies provided in that regulation. The consideration of payment of termination-related costs would ultimately rely on the type of termination and the negotiation of the settlement agreement.

Post-Hearing Questions for the Record
Submitted to Mr. Aman Djahanbani
From Senator Kelly Ayotte
QFR#9

Implementation of Wartime Contracting Reforms
July 16, 2013

Question:

What clause in the Federal Acquisition Regulation allows you to terminate the contract and not pay equitable adjustment?

Answer:

FAR 52.249-6 Termination (Cost-Reimbursement) is the applicable termination clause in most USAID contracts. In regard to allowability of termination-related costs, the rules of allowability for costs are generally similar for both terminations for default and terminations for convenience, except that in the default situation, settlement proposal preparation costs are not allowable and the contractor gets paid for fee or profit only for the services or supplies actually accepted by the Government (rather than as a percentage of the work performed under the contract).